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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2015–0097]

Asian Longhorned Beetle: Update List of Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Asian longhorned beetle (ALB) regulations by removing plants of the genus *Celtis* from the list of regulated articles, which we have determined not to be a host plant of ALB. This action is necessary to relieve restrictions on the movement of regulated articles that are not hosts of ALB. As a result of this action, there are no longer any restrictions on the movement of *Celtis* spp. plants from areas quarantined for ALB.

DATES: This interim rule is effective June 16, 2016. We will consider all comments that we receive on or before August 15, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0097.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0097, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0097* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, M.S., Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, Imports, Regulations and Manuals, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 851–2352; email: *Claudia.Ferguson@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB, *Anoplophora glabripennis*), an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It attacks many healthy hardwood trees, including maple, horse chestnut, birch, poplar, willow, and elm. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and wood debris of half an inch or more in diameter are subject to infestation. The beetle bores into the heartwood of a host tree, eventually killing the tree. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulation at tree bases. They feed on, and overwinter in, the interiors of trees. Adult beetles emerge in the spring and summer months from round holes approximately three-eighths of an inch in diameter that they bore through branches and trunks of trees. After emerging, adult beetles feed for 2 to 3 days and then mate. Adult females then lay eggs in oviposition sites that they make on the branches of trees. A new generation of ALB is produced each year. If this pest moves into the hardwood forests of the United States, the nursery, maple syrup, and forest product industries could experience severe economic losses. In addition, urban and forest ALB infestations will result in environmental damage, aesthetic deterioration, and a reduction of public enjoyment of recreational spaces.

The regulations in 7 CFR 301.51–1 through 301.51–9 restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States.

Section 301.51–2 of the regulations designates certain items as regulated articles. Regulated articles may not be moved interstate from quarantined areas except in accordance with the conditions specified in §§ 301.51–4 through 301.51–9 of the regulations. Regulated articles listed in § 301.51–2(a) have included green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of half an inch or more in diameter of the following genera: *Acer* (maple), *Aesculus* (horse chestnut), *Albizia* (mimosa), *Betula* (birch), *Celtis* (hackberry), *Cercidiphyllum* (katsura), *Fraxinus* (ash), *Koelreuteria* (golden rain tree), *Platanus* (sycamore), *Populus* (poplar), *Salix* (willow), *Sorbus* (mountain ash), and *Ulmus* (elm). This list of genera is based on scientific literature provided by government officials, scientists, and government and individual researchers from China as well as survey information collected in the United States since discovery of the pest.

On April 27, 2015, the Animal and Plant Health Inspection Service (APHIS) issued a Federal Order[1] effective on that date to immediately remove plants of the genus *Celtis* (hackberry) as regulated articles for ALB from the host list. This action responds to research conducted by APHIS indicating that ALB does not complete its life cycle in hackberry trees. Therefore, such trees no longer need to be inspected or considered for treatment, and hackberry can now be moved from areas under quarantine for ALB.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary because we have determined that hackberry is not a host for ALB. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register.**

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[1] DA–2015–22, "Updated List of Regulated Articles for Asian Longhorned Beetle (*Anoplophora glabripennis*) removing *Celtis* spp. as a host of ALB: *https://www.aphis.usda.gov/plant_health/plant_pest_info/asian_lhb/downloads/DA-2015-22.pdf.*

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

The hackberry is a widespread small- to medium-sized fast-growing tree. It is widely distributed in the eastern United States from the southern New England States through central New York west to North and South Dakota. The range extends south from western Nebraska to northwestern Texas, then east to Arkansas, Tennessee, and North Carolina, with scattered occurrences in Mississippi, Alabama, and Georgia.

The hackberry is not valuable as a timber tree. Hackberry wood is heavy, soft, light-yellow, and coarse-grained. It rots easily and therefore is generally undesirable commercially. Occasionally, it is utilized to produce fencing, crates and boxes, or inexpensive furniture, but more commonly it is used as firewood.[2] Under industry standards for business size established by the Small Business Administration, most firewood retailers and wholesalers are considered to be small entities.

Removal of hackberry from the ALB host list will mean that interstate movement of the wood from ALB-quarantined areas will not require a certificate or limited permit issued by an inspector or by a person operating under a compliance agreement. Firewood wholesalers and retailers and other businesses that move hackberry wood from ALB-quarantined areas will benefit from the interim rule, but the economic effects will be modest.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.51–2 [Amended]

■ 2. In § 301.51–2, paragraph (a) is amended by removing the words "*Celtis* (hackberry)".

Done in Washington, DC, this 10th day of June 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–14248 Filed 6–15–16; 8:45 am]

BILLING CODE 3410–34–P

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[2] *http://plants.usda.gov/plantguide/pdf/pg_ceoc.pdf.*

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–FV–15–0063; FV16–930–1 FR]

Tart Cherries Grown in the States of Michigan, et al.; Free and Restricted Percentages for the 2015–16 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Cherry Industry Administrative Board (Board) to establish free and restricted percentages for the 2015–16 crop year under the marketing order for tart cherries grown in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin (order). The Board locally administers the marketing order and is comprised of producers and handlers of tart cherries operating within the production area. This action establishes the proportion of tart cherries from the 2015 crop which may be handled in commercial outlets at 80 percent free and 20 percent restricted. In addition, this rule increases the carry-out volume of fruit to 55 million pounds for this season. These percentages should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns.

DATES: Effective June 17, 2016.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Jennie.Varela@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, free and restricted percentages may be established for tart cherries handled during the crop year. This final rule establishes free and restricted percentages for tart cherries for the 2015–16 crop year, beginning July 1, 2015, through June 30, 2016.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule establishes free and restricted percentages for the 2015–16 crop year. This rule establishes the proportion of tart cherries from the 2015 crop which may be handled in commercial outlets at 80 percent free and 20 percent restricted. In addition, this rule increases the carry-out volume of fruit to 55 million pounds for calculation purposes for this season. This action should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. The carry-out and the final percentages were recommended by the Board at a meeting on September 10, 2015.

Section 930.51(a) of the order provides authority to regulate volume by designating free and restricted percentages for any tart cherries acquired by handlers in a given crop year. Section 930.50 prescribes procedures for computing an optimum supply based on sales history and for calculating these free and restricted percentages. Free percentage volume may be shipped to any market, while restricted percentage volume must be held by handlers in a primary or secondary reserve, or be diverted or used for exempt purposes as prescribed in §§ 930.159 and 930.162 of the regulations. Exempt purposes include, in part, the development of new products, sales into new markets, the development of export markets, and charitable contributions. For cherries held in reserve, handlers would be responsible for storage and would retain title of the tart cherries.

Under § 930.52, only those districts with an annual average production of at least six million pounds are subject to regulation, and any district producing a crop which is less than 50 percent of its annual average is exempt. The regulated districts for the 2015–16 crop year are: District 1—Northern Michigan; District 2—Central Michigan; District 3—Southern Michigan; District 4—New York; District 7—Utah; District 8—Washington; and District 9—Wisconsin. Districts 5 and 6 (Oregon and Pennsylvania, respectively) are not regulated for the 2015–16 season.

Demand for tart cherries and tart cherry products tends to be relatively stable from year to year. Conversely, annual tart cherry production can vary greatly. In addition, tart cherries are processed and can be stored and carried over from crop year to crop year, further impacting supply. As a result, supply and demand for tart cherries are rarely in balance.

Because demand for tart cherries is inelastic, total sales volume is not very responsive to changes in price. However, prices are very sensitive to changes in supply. As such, an oversupply of cherries would have a sharp negative effect on prices, driving down grower returns. The Board, aware of this economic relationship, focuses on using the volume control provisions in the order to balance supply and demand to stabilize industry returns.

Pursuant to § 930.50 of the order, the Board meets on or about July 1 to review sales data, inventory data, current crop forecasts, and market conditions for the upcoming season and, if necessary, to recommend preliminary free and restricted percentages if anticipated supply would exceed demand. After harvest is complete, but no later than September 15, the Board meets again to update their calculations using actual production data, consider any necessary adjustments to the preliminary percentages, and determine if final free and restricted percentages should be recommended to the Secretary.

The Board uses sales history, inventory, and production data to determine whether there is a surplus and, if so, how much volume should be restricted to maintain optimum supply. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year. Optimum supply is defined as average free sales for the prior three years plus desirable carry-out inventory. Desirable carry-out is the amount of fruit needed by the industry to be carried into the succeeding crop year to meet market demand until the new crop is available. Desirable carry-out is set by the Board after considering market circumstances and needs. Section 930.50(a) specifies that desirable carry-out can range from zero to a maximum of 20 million pounds but also authorizes the Board to establish an alternative carry-out figure with the approval of the Secretary.

In addition, USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (*http://www.ams.usda.gov/publications/content/1982-guidelines-fruit-vegetable-marketing-orders*) specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This requirement is codified in § 930.50(g) of the order, which specifies that in years when restricted percentages are established, the Board shall make available tonnage equivalent to an additional 10 percent of the average sales of the prior three years for market expansion (market growth factor).

After the Board determines optimum supply, desirable carry-out, and the market growth factor, it must examine the current year's available volume to determine whether there is an oversupply situation. Available volume includes carry-in inventory (any inventory available at the beginning of the season) along with that season's production. If production is greater than the optimum supply minus carry-in, the difference is considered surplus. This surplus tonnage is divided by the sum of production in the regulated districts to reach a restricted percentage. This percentage must be held in reserve or used for approved diversion activities, such as exports.

The Board met on June 25, 2015, and computed an optimum supply of 208 million pounds for the 2015–16 crop year using the average of free sales for the three previous seasons and a desirable carry-out of 20 million pounds. The Board then subtracted the estimated carry-in of 104 million pounds from the optimum supply to calculate the production needed from the 2015–16 crop to meet optimum supply. This number, 104 million pounds, was subtracted from the Board's estimated 2015–16 production of 233 million pounds to calculate a surplus of 129 million pounds of tart cherries. The surplus minus the market growth factor was then divided by the expected production in the regulated districts (228 million pounds) to reach a preliminary restricted percentage of 48 percent for the 2015–16 crop year.

In discussing the calculations, industry participants commented that a carry-out of 20 million pounds would not meet their needs at the end of the season before the new crop is available. To address that concern, the Board recommended increasing the desirable carry-out to 55 million pounds for the 2015–16 season. This change increased the optimum supply to 243 million pounds, reducing the surplus to 94 million pounds.

The Board also discussed whether the substantial reduction of supply in 2012 due to weather was still a factor that needed to be considered in determining optimum supply. Because of the crop loss, sales in 2012–13 reached only 123 million pounds, nearly 100 million pounds less than 2013–14 sales. In the previous two seasons when considering volume regulation, the Board recommended economic adjustments to account for the substantial decline in 2012. The Board again determined that the market required additional tonnage to continue recovering sales and voted to make an economic adjustment of 43 million pounds to increase the available supply of tart cherries. The Board also complied with the market growth factor requirement by adding 19 million pounds (188 million pounds times 10 percent, rounded) to the free supply.

The economic adjustment and market growth factor further reduced the preliminary surplus to 32 million pounds. After these adjustments, the preliminary restricted percentage was recalculated as 14 percent (32 million pounds divided by 228 million pounds).

The Board met again on September 10, 2015, to consider establishing final volume regulation percentages for the 2015–16 season. The final percentages are based on the Board's reported production figures and the supply and demand information available in September. The total production for the 2015–16 season was 249 million pounds, 25 million pounds above the Board's June estimate. In addition, growers diverted 1 million pounds in the orchard, leaving 248 million pounds available to market. Using the actual production numbers, and accounting for the recommended increase in desirable carry-out and economic adjustment, as well as the market growth factor, the restricted percentage was recalculated.

The Board subtracted the carry-in figure used in June of 104 million pounds from the optimum supply of 243 million pounds to determine 139 million pounds of 2015–16 production would be necessary to reach optimum supply. The Board subtracted the 139 million pounds from the actual production of 248 million pounds, resulting in a surplus of 109 million pounds of tart cherries. The surplus was then reduced by subtracting the economic adjustment of 43 million pounds and the market growth factor of 19 million pounds, resulting in an adjusted surplus of 47 million pounds. The Board then divided this final surplus by the actual production in the regulated districts (240 million pounds) to calculate a restricted percentage of 20 percent with a corresponding free percentage of 80 percent for the 2015–16 crop year, as outlined in the following table:

	Millions of pounds
Final Calculations:	
(1) Average sales of the prior three years	188
(2) Plus desirable carry-out	55
(3) Optimum supply calculated by the Board	243
(4) Carry-in as of July 1, 2015	104
(5) Adjusted optimum supply (item 3 minus item 4)	139
(6) Board-reported production	248
(7) Surplus (item 6 minus item 5)	109
(8) Total economic adjustments	43
(9) Market growth factor	19
(10) Adjusted surplus (item 7 minus items 8 and 9)	47
(11) Production from regulated districts	240
	Percent
Final Percentages:	
Restricted (item 10 divided by item 11 × 100)	20
Free (100 minus restricted percentage)	80

The primary purpose of setting restricted percentages is to attempt to bring supply and demand into balance. If the primary market is oversupplied with cherries, grower prices decline substantially. Restricted percentages have benefited grower returns and helped stabilize the market as compared to those seasons prior to the implementation of the order. The Board believes the available information indicates that a restricted percentage should be established for the 2015–16 crop year to avoid oversupplying the market with tart cherries. Consequently, based on its discussion of this issue and the result of the above calculations, the Board recommended final percentages of 80 percent free and 20 percent restricted by a vote of 16 in favor and 1 against.

During the discussion of the proposed restriction, some members expressed concern regarding competition from imported tart cherry juice concentrate. In particular, some were concerned that the additional volume from imports is not accounted for in the optimum supply formula, thus not capturing overall supply and demand. An economist from Michigan State University is working with the Board to assemble information on tart cherry imports. The Board also voted to establish an import committee to review the data on imports once it is available. Another member asserted that any restriction would adversely impact growers' ability to sell all of their fruit. One member also said that a 20 percent restriction seemed high given the moderate production in 2015.

One member noted that setting the restriction at 20 percent would aid in maintaining price stability, with another member reminding the Board of the importance of the order and volume control in avoiding oversupplying the market with tart cherries. One other member said it was also important to maintain a reserve in case of another crop disaster. Other members stated the demand adjustment and the recommended increased carry-out would put sufficient fruit on the market in the coming year.

After reviewing the available data and considering the concerns expressed, the Board determined that a 20 percent restriction with a carry-out volume of 55 million pounds meets sales needs and establishes some reserves without oversupplying the market. Thus, the Board recommended establishing final percentages of 80 percent free and 20 percent restricted. The Board could meet and recommend the release of additional volume during the crop year if conditions so warranted.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 600 producers of tart cherries in the regulated area and approximately 40 handlers of tart cherries who are subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000, and small agricultural service firms have been defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS) and Board data, annual 2014–2015 tart cherry crop value was $106.745 million. Dividing this figure by the number of producers (600) yields an average annual receipts per producer estimate of about $178,000. Since this is well below $750,000, it can be concluded that most tart cherry producers are small producers, according to the SBA criteria. In 2014, The Food Institute estimated an f.o.b. price of $0.96 per pound for frozen tart cherries, which make up the majority of processed tart cherries. Multiplying tart cherry utilized production of 300.3 million pounds by $0.96 yields a handler-level annual receipts estimate of $288.3 million. Dividing this figure by the number of handlers (40) yields an average annual receipts per handler estimate of about $7.2 million, which is below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

The tart cherry industry in the United States is characterized by wide annual fluctuations in production. According to NASS, tart cherry production in 2012 was 85 million pounds, 294 million pounds in 2013, and in 2014, production was 304 million pounds. Because of these fluctuations, the supply and demand for tart cherries are rarely in balance.

Demand for tart cherries is inelastic, meaning changes in price have a minimal effect on total sales volume as manufacturers do not easily substitute other fruits for tart cherry products. However, prices are very sensitive to changes in supply. Grower prices vary widely in response to the large swings in annual supply, ranging from a low of 7.3 cents per pound in 1987 to a high of 59.4 cents per pound in 2012.

Because of this relationship between supply and price, oversupplying the market with tart cherries would have a sharply negative effect on prices, driving down grower returns. The Board, aware of this economic relationship, focuses on using the volume control authority in the order in an effort to balance supply and demand in order to stabilize industry returns. This authority allows the industry to set free and restricted percentages as a way to bring supply and demand into balance. Unrestricted cherries can be marketed by handlers to any outlet, while a quantity corresponding to the restricted percentage must be held by handlers in reserve, diverted, or used for exempted purposes.

This final rule establishes free and restricted percentages using an increased carry-out volume of 55 million pounds for the 2015–16 crop year under the tart cherry marketing order. This action establishes 2015–16 percentages of 80 percent free and 20 percent restricted. These percentages should stabilize marketing conditions and help improve grower returns by adjusting supply to meet market demand. This action regulates tart cherries handled in Michigan, New York, Utah, Washington, and Wisconsin. The authority for this action is provided for in §§ 930.51(a) and 930.52 of the order.

This rule will result in some fruit being diverted from the primary domestic markets. However, as mentioned earlier, the USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (*http://www.ams.usda.gov/publications/content/1982-guidelines-fruit-vegetable-marketing-orders*) specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity that is available under this action is greater than 110 percent of the average quantity shipped in the prior three years.

In addition, there are secondary uses available for restricted fruit, including the development of new products, sales into new markets, the development of export markets, and being placed in reserve. While these alternatives may provide different levels of return than the sales to primary markets, they play an important industry role. Restricted fruit is utilized for new products, new domestic markets, and development of export markets. In 2014–15, these activities accounted for 21 million pounds in sales, nearly 14 million of which were exports.

Placing tart cherries into reserves is also a key part of balancing supply and demand. Although the industry must bear the handling and storage costs for fruit in reserve, reserves stored in large crop years are used to supplement supplies in short crop years. The reserves allow the industry to mitigate the impact of oversupply in large crop years, while allowing the industry to maintain and supply markets in years where production falls below demand. Further, storage and handling costs are more than offset by the increase in price when moving from a large crop to a short crop year.

In addition, the Board recommended an increased carry-out of 55 million pounds to reach an optimum supply of 243 million pounds. The recommended demand adjustment of an additional 43 million pounds will make the regulation less restrictive. Even with the recommended restriction, over 300 million pounds of fruit will be available to the domestic market. Consequently, it is not anticipated that this action will unduly burden growers or handlers.

While this action could result in some additional costs to the industry, these costs are more than outweighed by the benefits. The purpose of setting restricted percentages is to attempt to bring supply and demand into balance. If the primary market (domestic) is oversupplied with cherries, grower prices decline substantially. Without volume control, the primary market will likely be oversupplied, resulting in lower grower prices.

The three districts in Michigan, along with the districts in New York, Utah, Washington, and Wisconsin, are the restricted areas for this crop year with a combined total production of 240 million pounds. A 20-percent restriction means 192 million pounds are available to be shipped to primary markets from these five states. The 192 million pounds from the restricted districts, nearly 9 million pounds from the unrestricted districts (Oregon and Pennsylvania), and the 104 million pound carry-in inventory make a total of 305 million pounds available as free tonnage for the primary markets. This is similar to the 300 million pounds of total utilized production in 2014–15 and is less restrictive than the 12 percent restriction in 2011–12, which made just under 262 million pounds available. Further, the Board could meet and recommend the release of additional volume during the crop year if conditions so warranted.

Prior to the implementation of the order, grower prices often did not come close to covering the cost of production. The most recent costs of production determined by representatives of Michigan State University are an estimated $0.33 per pound. To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. Based on the model, the use of volume control would have a positive impact on grower returns for this crop year. With volume control, grower prices are estimated to be approximately $0.03 per pound higher than without restrictions.

In addition, absent volume control, the industry could start to build large amounts of unwanted inventories. These inventories would have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carry-in inventories, the average grower price decreases by $0.003 per pound.

Consumer prices largely do not reflect fluctuations in cherry supplies. Therefore, this rule should have little or no effect on consumer prices and should not result in a reduction in retail sales.

The free and restricted percentages established by this rule provide the market with optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. As the restriction represents a percentage of a handler's volume, the costs, when applicable, are proportionate and should not place an extra burden on small entities as compared to large entities.

The stabilizing effects of this action benefit all handlers by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all growers and handlers by allowing them to better anticipate the revenues their tart cherries would generate. Growers and handlers, regardless of size, benefit from the stabilizing effects of this restriction. In addition, the Board determined that increasing carry-out to 55 million pounds should provide processors enough fruit in the pipeline to meet market needs going into the next season.

The Board considered some alternatives in its preliminary restriction discussions that affected this recommended action. The first alternative concerned the average sales in estimating demand for the coming season, and the second alternative regarded the recommended carry-out figure.

Regarding demand, the Board began with the actual sales average of 188 million pounds. There was concern, however, that this value, which incorporated the weather-related crop failure of 2012, would result in an over-restrictive calculation. After considering options in the range of 40 million to 62 million pounds, the Board determined that an adjustment of 43 million pounds, would best meet the industry's sales needs. Thus the other alternatives were rejected and the Board recommended the 43 million pound economic adjustment.

Regarding the carry-out value, the Board previously considered a one-year increase above the 20 million pounds specified in the order to 50 million pounds. However, this season, Board members indicated the carry-out should be even higher to facilitate processing at the end of the crop year. Board members suggested a series of options from 35 million to 60 million pounds of carry-out. Some felt the additional fruit is necessary while others were more cautious about having additional fruit on the market at the time of harvest, which may put downward pressure on prices. In conjunction with the demand adjustment, the Board reached a consensus and recommended the Secretary increase the maximum carry-out to 55 million pounds for the 2015–16 season.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0177, Tart Cherries Grown in the States of MI, NY, PA, OR, UT, WA, and WI. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action will not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule. One of the public comments received did address the initial regulatory flexibility analysis. A review of that comment is included below as part of the review of all public comments received.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, the Board's meeting was widely publicized throughout the tart cherry industry, and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the June 25, 2015, and September 10, 2015, meetings were public meetings, and all entities, both large and small, were able to express views on this issue. A proposed rule concerning this action was published in the **Federal Register** on December 17, 2015 (80 FR 78677). Copies of the rule were sent via email to all Board members and tart cherry handlers. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 19, 2015, was provided to allow interested persons to respond to the proposal.

Nine comments were received during the comment period in response to the proposal. The commenters included both growers and handlers, and all opposed the proposed regulation. Most of the points made by the commenters had been discussed prior to the Board's vote.

All nine comments made reference to imported tart cherries. Five commenters referred to figures retrieved from the Foreign Agricultural Service's Global Agricultural Trade System (GATS) which indicates an equivalent of more than 200 million pounds of cherries were imported into the U.S. in 2014. The data do indicate that imported volume has grown. The data also indicate tart cherry juice concentrate represents by far the largest segment of imports, which according to the data, has experienced tremendous growth beginning in 2012.

Several of the commenters indicated that the proposed volume restriction would restrict their chances of gaining some of the market share attributed to imports. While the domestic industry did experience a significant drop in shipments in 2012 due to a weather-related incident, with the exclusion of that year, shipments of domestic tart cherries have routinely exceeded 200 million pounds. Given the rapid increase in the import volume of tart cherry juice and the level of domestic shipments, the vast majority of imported tart cherry juice is going to new markets not previously served by the domestic industry. At the very least, these new markets serviced by imported tart cherry juice far exceed the estimated 47 million pounds of tart cherries that are restricted by this regulation.

As such, should domestic handlers decide to compete in these new markets, in most cases, restricted cherries could be used and the handler could receive diversion credits under the new market and market expansion provisions provided under the order. Further, the Board recently recommended and USDA approved extending diversion credits for new markets and market expansion from one year to three years, creating even more opportunities to pursue these new markets. Consequently, handlers would have ample opportunity to compete for new markets using restricted cherries while continuing to service traditional markets with free cherries. In addition, should industry efforts cause demand to exceed existing volume, the Board could meet and recommend the release of additional volume.

Two other commenters indicated imported tart cherries should be included as part of the process for calculating free and restricted percentages. Under the order, when computing and determining percentages for recommendation to USDA, the Board is required to give consideration to several factors, including supplies of competing commodities and the economic factors having a bearing on the marketing of cherries. The Board's discussion regarding establishing free and restricted percentages for this season included considerable discussion regarding imported tart cherries. Concerns were raised and discussed regarding the impact of imported tart cherries on the market and how that would impact a restriction. Discussion also included an estimated price point for imported tart cherry juice as a comparison with that for domestic production. It was also indicated that the Board was working to assemble additional information on tart cherry imports, and the Board voted to establish an import committee to review the import data.

However, in the Board discussion, comments were also made regarding the importance of the order and volume control in avoiding oversupplying the market with tart cherries. The importance of maintaining a reserve in case of another crop failure was also expressed. Other Board members also stated the demand adjustment and the recommended increased carry-out would put sufficient fruit on the market for the coming year. After discussing the available information on imported product and considering the concerns expressed, no motion was made to include an additional adjustment to the calculations based on imported fruit.

Two comments stated that restriction has contributed to the loss of market share to imports, with one requesting USDA reconsider the economic impact of this regulation under the RFA with regard to imports. Aside from a reference to the volume of imported tart cherries, neither comment provided any data in support of these assertions. Based on the information from GATS, tart cherry imports increased substantially beginning in 2012. For 2011–12, the season prior to the season with a significant crop loss due to weather, total shipments were 264 million pounds, with 213 million pounds coming from free sales. While the reduced crop for 2012–13 season had total sales of 123 million pounds, in the years following, sales rebounded to 222 million pounds in 2013–14 (no volume restriction) and to 235 million pounds total sales in 2014–15. The free sales for 2014–15 season were actually higher than those for the 2011–12 season at 214 million.

The utilization numbers as reported by NASS have also been increasing from approximately 230 million pounds in 2011 to 290 million pounds in 2013 and to 298 million pounds in 2014. In addition, the NASS numbers show the frozen segment, the largest utilization of domestic tart cherries, increased from 154 million pounds in 2011 to 158 million pounds in 2013 and to 199 million pounds in 2014. The other category as reported by NASS, which includes juice and dried cherries, also experienced higher numbers in 2013 and 2014 as compared to 2011. The 92 million pounds and 66 million pounds utilized in 2013 and 2014, respectively, are substantially higher than the 37 million pounds utilized in 2011.

Further, with the exception of the 2012–13 season, grower prices have been relatively stable. In 2011, NASS reported an average grower price for domestic tart cherries of $0.298. For the years 2013 and 2014, NASS reported average grower prices of $0.359 and $0.355 per pound, respectively. The figures for 2015 are not yet available.

As previously stated, the demand for tart cherries is inelastic, such that changes in price have minimal effect on total sales volume, yet prices are very sensitive to changes in supply. This is demonstrated by the sharp jump in average grower price in 2012 to $0.594 per pound with the substantial decrease in domestic supply. Given that GATS reports tart cherry imports as approximately 217 million pounds in 2012, 130 million pounds in 2013, and 244 million pounds in 2014, there should be some downward pressure on price if this volume was competing directly for the same market serviced by the domestic tart cherry industry. However, this is not reflected in the available numbers. Using the available sales, utilization, and price data, it is difficult to determine what, if any, specific impact imports have had on the market for domestic tart cherries.

Five comments mentioned the financial burden a restriction would place on growers and handlers. The RFA analysis recognizes that the industry bears a cost when keeping product off the market, but also notes that the gains in prices and stability outweigh that cost. Further, placing tart cherries into reserves is an important part of balancing supply and demand. Although there are costs associated with the storage of fruit, reserves allow the industry to mitigate the impact of oversupply in large production years while helping to maintain and supply markets in years where production falls short or when there are crop failures as in 2002 and 2012. Storage costs are more than offset by the increase in price during years with a short crop as evidenced by the average grower price in 2012. As mentioned in the RFA, the restriction is expected to have a positive impact on price.

While none of the comments suggested an alternative percentage for a volume restriction, most suggest that there should be no restriction. The formula used by the Board in recommending the proposed regulation is based, in part, on sales history. The Board has taken steps to recommend putting additional fruit on the market as carry-out both in this action and in the previous season's regulation. In 2014, the Board recommended a carry-out of 50 million pounds yet entered the 2015–16 season with 104 million pounds of unrestricted fruit on the market. In addition, USDA purchased over 20 million pounds of cherry products since 2014 as emergency surplus purchases, and has announced plans to purchase up to 60 million pounds of tart cherry products in 2016.

For the 2015–16 season, the Board recommended an increase in the carry-out to 55 million pounds, made an economic adjustment to add an additional 43 million pounds to available supply, and an additional 19 million pounds were added under the market growth factor. With these adjustments, there are more than 305 million pounds of tart cherries available for free sales for 2015–16. This volume exceeds total sales from 2011–12 of both free and restricted cherries of 264 million pounds, the last season before the crop disaster in 2012. Further, the order provides numerous alternatives for the use of restricted fruit, such as handler diversion, for complying with the recommended restriction. Therefore, as stated in the RFA, it is not anticipated that this action will unduly burden growers or handlers.

Additional concerns raised in the comments pertain to pending litigation or issues not applicable to the proposed rule.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses*. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping tart cherries from the 2015–16 crop. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 930.151 is revised to read as follows:

§ 930.151 Desirable carry-out inventory.

For the crop year beginning on July 1, 2015, the desirable carry-out inventory, for the purposes of determining an optimum supply volume, will be 55 million pounds.

■ 3. Section 930.256 is revised to read as follows:

§ 930.256 Free and restricted percentages for the 2015–16 crop year.

The percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2015, which shall be free and restricted, respectively, are designated as follows: Free percentage, 80 percent and restricted percentage, 20 percent.

Dated: June 13, 2016.

Dana Coale,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2016–14333 Filed 6–15–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–3085; Airspace Docket No. 15–ASW–2]

Amendment of Class E Airspace; Little Rock, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Little Rock Air Force Base (AFB), Little Rock, AR. Airspace reconfiguration is necessary due to closure of the air traffic control tower and associated approaches at Dennis F. Cantrell Field, Conway, AR. Dennis F. Cantrell Field is being removed from the airspace designation and legal description as it is no longer needed to describe the boundaries of Little Rock AFB. This action is necessary to ensure continued safety within the National Airspace System (NAS). Additionally, the geographic coordinates for Little Rock AFB and Saline County Airport, Benton, AR, are being adjusted.

DATES: Effective 0901 UTC, September 15, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

FAA Order 7400.9, Airspace Designations and Reporting Points is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817–222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Little Rock AFB, Little Rock, AR.

History

On March 7, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend the Class E airspace at Little Rock Air Force Base, AR. The air traffic control tower at Dennis F. Cantrell Field, Conway, AR, has closed thereby removing Dennis F. Cantrell Field from the description for Little Rock AFB, (81 FR 11692), Docket No. FAA–2015–3085. Additionally, geographic coordinates for Little Rock AFB and Saline County Airport, Benton, AR, are adjusted. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA

Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace at Little Rock Air Force Base (AFB), AR. The air traffic control tower at Dennis Cantrell Field, Conway, AR, has closed, and approaches cancelled. This action removes Dennis F. Cantrell Field, Conway, AR, from the airspace designation and regulatory text for Little Rock AFB, as they are no longer needed to define its boundaries. Additionally, geographic coordinates for Little Rock AFB, are changed from (lat. 34°54′59″ N., long. 92°08′47″ W.) to (lat. 34°55′03″ N., long. 92°08′42″ W.) and Saline County Airport, Benton, AR, coordinates are changed from (lat. 34°33′23″ N., long. 92°36′25″ W.) to (lat. 34°35′25″ N., long. 92°28′46″ W.). These minor adjustments reflect the current information in the FAA's aeronautical database.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW AR E5 Little Rock, AR [Amended]

Little Rock AFB, AR
(Lat. 34°55′03″ N., long. 92°08′42″ W.)
Little Rock, Adams Field, AR
(Lat. 34°43′46″ N., long. 92°13′29″ W.)
Benton, Saline County Airport, AR
(Lat. 34°35′25″ N., long. 92°28′46″ W.)

That airspace extending upward from 700 feet above the surface bounded within a 20-mile radius of Little Rock AFB, and within a 22-mile radius of Adams Field Airport and within a 6.3-mile radius of Saline County Airport.

Issued in Fort Worth, TX, on June 7, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–14071 Filed 6–15–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2011–N–0179]

Prior Notice of Imported Food Questions and Answers (Edition 3); Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a guidance for industry entitled "Prior Notice of Imported Food Questions and Answers (Edition 3): Guidance for Industry." The guidance provides updated information pertaining to prior notice of imported food under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Food Safety Modernization Act (FSMA) on January 4, 2011. The guidance is intended to help the food industry and others comply with prior notice requirements.

DATES: Submit either electronic or written comments on FDA guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2011–N–0179 for "Prior Notice of Imported Food Questions and Answers (Edition 3): Guidance for Industry." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Office of Regulatory Affairs, Office of Food and Feed Operations, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Angel M. Suarez, Office of Regulatory Affairs, Office of Food and Feed Operations, Division of Food Defense Targeting, Food and Drug Administration, Element Bldg., HFC–180, 12420 Parklawn Dr., Rockville, MD 20857–20993, 866–521–2297.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Prior Notice of Imported Food Questions and Answers (Edition 3): Guidance for Industry." We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or on the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

Since publication of edition two of the guidance, FDA has issued a final rule requiring the submission to FDA of prior notice of food, including animal feed, imported or offered for import into the United States (November 7, 2008, 73 FR 66294) and, in accordance with section 304 of FSMA, a final rule requiring the name of any country to which an article has been refused entry be reported in prior notices (May 30, 2013, 78 FR 32359). FDA is issuing a third edition of its prior notice guidance to address questions received since publication of the second edition, clarify previous responses, update previous responses as appropriate to reflect the 2008 final rule, and include information about the new prior notice information requirement created by FSMA.

FDA issued the first and second editions of this guidance on December 16, 2003, and May 3, 2004, respectively. Both editions were issued as Level 1 guidance documents under 21 CFR 10.115. Consistent with FDA's good guidance practices regulations (21 CFR 10.115(g)(2)), the Agency accepted comments, but implemented the documents immediately because it determined that prior public participation was not feasible or appropriate.

In the **Federal Register** of March 31, 2014 (79 FR 17947), we made available a draft guidance for industry entitled "Draft Guidance for Industry: Prior Notice of Imported Food Questions and Answers (Edition 3)" and gave interested parties an opportunity to submit comments by May 30, 2014, for us to consider before beginning work on the final version of the guidance. We carefully considered all comments received when preparing the final guidance. No substantive changes were made in finalizing the guidance. The guidance announced in this notice finalizes the draft guidance dated March 2014.

II. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/default.htm* or *http://www.regulations.gov.* Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: June 10, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–14231 Filed 6–15–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0322]

RIN 1625–AA08

Special Local Regulation; Cumberland River, Mile 190.5 to 194.0; Nashville, TN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a special local regulation for all waters of the Cumberland River beginning at mile marker 190.5 and ending at mile marker 194.0. This special local regulation is necessary to

provide safety for the participants in the "Thunder on the Cumberland" marine event. This rulemaking restricts transits into, through and within the regulated area unless authorized by the Captain of the Port Ohio Valley or a designated representative. We invite your comments on this rulemaking to assess for future and events and similar rulemakings.

DATES: This rule is effective from 9 a.m. on June 17, 2016 through 6 p.m. on June 19, 2016. Comments and related material must be received by the Coast Guard on or before July 18, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0322 using the Federal eRulemaking Portal at *http://www.regulations.gov*. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Ashley Schad, MSD Nashville, Nashville, TN, at 615–736–5421 or at *Ashley.M.Schad@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

Fairchild Racing is conducting power boat races daily beginning on June 17, 2016 through June 19, 2016. The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the scheduled race event, consisting of various sized power vessels with at least 50 participants on the Cumberland River, presents potential navigational safety hazards. The Captain of the Port Ohio Valley (COTP) was notified of this event earlier this year and upon receiving and understanding all the details of the racing event, determined that additional safety measures are necessary to protect participants, spectators, and waterway users during this event. It is impracticable to publish an NPRM because we must establish this special local regulation by June 17, 2016. This rule provides for a comment period and comments received will be reviewed and analyzed to assist the Coast Guard in future rulemakings establishing similar regulatory requirements. The Coast Guard will notify the public and maritime community that this special local regulation will be in effect and of its enforcement periods via broadcast notices to mariners (BNM).

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to establish a special local regulation to protect participants and spectators during the "Thunder on the Cumberland" racing event beginning on June 17, 2016.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Ohio Valley (COTP) has determined that potential safety hazards associated with a speed-boat race on a navigable waterway present safety concerns for participants, spectators, and other person and vessels on the waterway. This rule is needed to protect personnel, vessels, and these navigable waters before, during, and after the scheduled racing event.

IV. Discussion of the Rule

This rule establishes a special local regulation which will be enforced from 9 a.m. to 11 a.m. and 12 p.m. to 6 p.m. daily from June 17, 2016 through June 19, 2016, for all waters of the Cumberland River beginning at mile marker 190.5 and ending at mile marker 194.0. The duration of the special local regulation is intended to ensure the safety of vessels, participants, spectators and other waterway users before, during, and after the scheduled event. No vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. The regulatory text for this rule appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. This special local regulation restricts transit on the Cumberland River from mile 190.5 to mile 194.0, for 8 hours a day for three days in June; Broadcast Notices to Mariners and Local Notices to Mariners will inform the community of this special local regulation and any changes in the planned scheduled so that they may plan accordingly for transits during this short restriction. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the special local regulated area may be small entities, for the reasons stated in section V.A above this rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves special local regulated area that would prohibit entry to unauthorized vessels. It is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of future regulations and rulemakings. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this TFR as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

■ 2. Add § 100.35T08–0322 to read as follows:

§ 100.35T08–0322 Special Local Regulation; Cumberland River Mile 190.5 to 194.0, Nashville, TN.

(a) *Regulated area.* All waters of the Cumberland River beginning at mile marker 190.5 and ending at mile marker 194.0 at Nashville, TN.

(b) *Periods of enforcement.* This rule will be enforced from 9 a.m. to 11 a.m. and from 12 p.m. to 6 p.m. daily June 17, 2016 through June 19, 2016.

(c) *Regulations.* (1) Entry into or transit through this area is prohibited unless authorized by the Captain of the Port Ohio Valley or a designated representative.

(2) Persons or vessels requiring entry into or passage through the area must request permission from the Captain of the Port Ohio Valley or a designated representative. U.S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1–800–253–7465.

(d) *Informational broadcasts.* The Captain of the Port Ohio Valley or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for this special local regulation as well as any changes in the dates and times of enforcement.

Dated: May 26, 2016.

R. V. Timme,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2016–14276 Filed 6–15–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2015–1039]

RIN 1625–AA08

Special Local Regulations; Sector Ohio Valley Annual and Recurring Special Local Regulations Update

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending and updating its special local regulations relating to recurring marine parades, regattas, and other events that take place in the Coast Guard Sector Ohio Valley area of responsibility (AOR). This rule informs the public of regularly scheduled events that require additional safety measures through the establishing of a special local regulation. Through this rulemaking the current list of recurring special local regulations is updated with revisions, additional events, and removal of events that no longer take place in Sector Ohio Valley's AOR. When these special local regulations are enforced, certain restrictions are placed on marine traffic in specified areas.

DATES: This rule is effective June 16, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2015–1039 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer James Robinson, Sector Ohio Valley, U.S. Coast Guard; telephone (502) 779–5347, email *James.C.Robinson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Captain of the Port (COTP) Ohio Valley is establishing, amending, and updating its current list of recurring special local regulations codified under 33 CFR 100.801 in Table no. 1, for the COTP Ohio Valley zone.

On January 25, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Sector Ohio Valley Annual and Recurring Special Local Regulations Update (81 FR 3976). During the comment period that ended April 25, 2016, the Coast Guard received information regarding dates for three events from the event sponsors. This information is discussed in this document.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Though we are not providing a full 30-day delay in the effective date, the Coast Guard did provide notice and the opportunity to comment through the NPRM process and is now providing as much notice as possible before the first recurring event enforcement is required on June 19. It is impracticable to provide a full 30-days notice because this rule must be effective June 19, 2016 to accommodate the first event.

III. Legal Authority and Need for Rule

The Coast Guard's authority for establishing a special local regulation is contained at 33 U.S.C. 1233. The Coast Guard is amending and updating the special local regulations under 33 CFR part 100 to include the most up to date list of recurring special local regulations for events held on or around navigable waters within the Sector Ohio Valley AOR. These events include marine parades, boat races, swim events, and others. The current list under 33 CFR 100.801 requires amending to provide new information on existing special local regulations, include new special local regulations expected to recur annually or biannually, and to remove special local regulations that are no longer required. Issuing individual regulations for each new special local regulation, amendment, or removal of an existing special local regulation creates unnecessary administrative costs and burdens. This rulemaking reduces administrative overhead and provides the public with notice through publication in the **Federal Register** of the upcoming recurring special local regulations.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received information regarding three recurring events from the event sponsors during the NPRM comment period. This information requires changes to the regulatory text of this rule from the proposed rule in the NPRM. Those changes are as follows:

Change 1: The sponsor of the Owensboro Air show requested a change to the proposed event date as listed in Table 1, Line 54. Instead of occurring 3 days during the first or second weekend in September, the new date will be published in the final rule as: 3 days during one of the last three weekends in September. This change was requested to enable the Air Show to take place without conflicting with other events occurring in September.

Change 2: The sponsor of the REV3 Triathlon requested a change to the proposed date as listed in Table 1, Line 4. Instead of occurring 1 day during the first or second weekend in May, the new date will be published in the final rule as: 1 day during the third or fourth weekend in May starting in 2016. This change was requested due to scheduling conflicts with other events. This final rule was not published in time for the May 22, 2016 occurrence of this event. Therefore, a temporary final rule for this event was issued on May 20, 2016. That rule is accessible as indicated under **ADDRESSES**.

Change 3: The sponsor of the Hadi-Shrine/Evansville Freedom Festival Air Show informed the Coast Guard that the proposed expanded date period from 3 to 4 days was no longer needed and the currently published date period of 3 days fits the air show portion of their event. Therefore, the date for this event as listed in Table 1, Line 46 will remain: 3 days during the second or third weekend in June. The event sponsor also informed the Coast Guard that the 2016 occurrence of this event fell on the fourth weekend in June. Therefore, a separate temporary final rule is being issued to establish the necessary special local regulation on June 24–26, 2016. That rule is available as indicated under **ADDRESSES**.

These requested changes are based on the individual sponsors' efforts to coordinate events alongside others in the local community. In some instances, these changes have been advertised to and planned on by the local community, and minimally impact the dates of 3 events as listed in the NPRM. These revised dates are also considered within the current environmental review. Therefore, the Coast Guard is publishing this final rule with the requested date changes. All proposed new additions to and removals from the recurring list remain the same as in the NPRM.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The Coast Guard expects the economic impact of this rule to be minimal, and therefore a full regulatory evaluation is unnecessary. This rule establishes special local regulations limiting access to certain areas under 33 CFR part 100 within Sector Ohio Valley's AOR. The effect of this rulemaking will not be significant because these special local regulations are limited in scope and duration. Additionally, the public is given advance notification through local forms of notice, the **Federal Register**, and/or Notices of Enforcement and thus will be able to plan around the special local regulations in advance. Deviation from the special local regulations established through this proposed rulemaking may be requested from the appropriate COTP and requests will be considered on a case-by-case basis. Broadcast Notices to Mariners and Local Notices to Mariners will also inform the community of these special local regulations so that they may plan accordingly for these short restrictions on transit. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted areas.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the special local regulation areas during periods of enforcement. The special local regulations will not have a significant economic impact on a substantial number of small entities because they are limited in scope and will be in effect for short periods of time. Before the enforcement period, the Coast Guard COTP will issue maritime advisories widely available to waterway users. Deviation from the special local regulations established through this rulemaking may be requested from the appropriate COTP and requests will be considered on a case-by-case basis.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of special local regulations related to marine event permits for marine parades, regattas, and other marine events. It is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the U.S. Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

■ 2. Amend § 100.801 by revising table 1 of § 100.801 to read as follows:

§ 100.801 Annual Marine Events in the Eighth Coast Guard District.

* * * * *

TABLE 1 OF § 100.801—OHIO VALLEY CAPTAIN OF THE PORT ZONE ANNUAL AND RECURRING MARINE EVENTS

Date	Event/Sponsor	Ohio Valley location	Regulated area
1. The first Saturday in April	University of Charleston Rowing/West Virginia Governor's Cup Regatta.	Charleston, WV	Kanawha River, Mile 59.9–61.4 (West Virginia).
2. 1 day—Saturday before Memorial Day weekend.	Venture Outdoors/Venture Outdoors Festival.	Pittsburgh, PA	Allegheny River, Mile 0.0–0.25 Monongahela River 0.0–0.25 (Pennsylvania).
3. 1 day—During the last week of April or first week of May.	Kentucky Derby Festival/Belle of Louisville Operating Board/Great Steamboat Race.	Louisville, KY	Ohio River, Mile 596.0–604.3 (Kentucky).
4. 1 day—Third or fourth weekend in May.	REV3/REV3 Triathlon	Knoxville, TN	Tennessee River, Mile 646.0–649.0 (Tennessee).
5. 1 day—Third weekend in May	World Triathlon Corporation/IRONMAN 70.3.	Chattanooga, TN	Tennessee River, Mile 463.0–466.0 (Tennessee).
6. 1 day—second weekend in June	Chattanooga Parks and Rec/Chattanooga River Rats Open Water Swim.	Chattanooga, TN	Tennessee River, Mile 464.0–469.0 (Tennessee).
7. 1 day—Third or fourth weekend in June.	Greater Morgantown Convention and Visitors Bureau/Mountaineer Triathlon.	Morgantown, WV	Monongahela River, Mile 101.0–102.0 (West Virginia).
8. 2 days—First weekend of June	Kentucky Drag Boat Association	Pisgah Bay, KY	Tennessee River, Mile 30.0 (Kentucky).
9. Fourth Sunday in June	Green Umbrella/Ohio River Paddlefest	Cincinnati, OH	Ohio River, Mile 459.5–470.2 (Ohio and Kentucky).
10. 1 day—Fourth or fifth Sunday in September.	Green Umbrella/Great Ohio River Swim	Cincinnati, OH	Ohio River, Mile 469.8–470.2 (Ohio and Kentucky).
11. 1 day—One of the last two weekends in September.	Ohio River Open Water Swim	Prospect, KY	Ohio River, Mile 588.0–590.0 9 (Kentucky).
12. 2 days—Second or third weekend in September.	Louisville Dragon Boat Festival	Louisville, KY	Ohio River, Mile 603.0–603.5 (Kentucky).
13. 1 day—Third or fourth Sunday of July.	Tucson Racing/Cincinnati Triathlon	Cincinnati, OH	Ohio River, Mile 469.3–470.2 (Ohio).
14. 2 days—First weekend of July	Kentucky Drag Boat Association	Pisgah Bay, KY	Tennessee River, Mile 30.0 (Kentucky).
15. 1 day—Second weekend in July	Bradley Dean/Renaissance Man Triathlon.	Florence, AL	Tennessee River, Mile 255.0–257.0 (Alabama).
16. 3 days—One of the first two weekends in July.	Madison Regatta, Inc./Madison Regatta	Madison, IN	Ohio River, Mile 555.0–560.0 (Indiana).
17. 1 day—Third Saturday in July	Pittsburgh Irish Rowing Club/St. Brendan's Cup Currach Regatta.	Pittsburgh, PA	Miles 7–9, Ohio River back channel (Pennsylvania).
18. 1 day—One of the last three weekends in June.	Louisville Race the Bridge Triathlon	Louisville, KY	Ohio River, Mile 601.5–603.0 (Kentucky).
19. 1 day—Fourth weekend in June	Team Magic/Chattanooga Waterfront Triathlon.	Chattanooga, TN	Tennessee River, Mile 463.0–465.0 (Tennessee).
20. 1 day—Fourth weekend in July	Team Magic/Music City Triathlon	Nashville, TN	Cumberland River, Mile 190.0–192.0 (Tennessee).
21. 2 days—Last two weekends in July or first week of August.	Friends of the Riverfront Inc./Pittsburgh Triathlon and Adventure Races.	Pittsburgh, PA	Allegheny River, Mile 0.0–1.5 (Pennsylvania).
22. 3 days—First week of August	EQT Pittsburgh Three Rivers Regatta	Pittsburgh, PA	Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.6, and Monongahela River, Mile 0.0–0.5 (Pennsylvania).
23. 2 days—First weekend of August	Kentucky Drag Boat Association	Pisgah Bay, KY	Tennessee River, Mile 30.0 (Kentucky).
24. 2 days—last weekend in September.	Captain Quarters Regatta	Louisville, KY	Ohio River, Mile 595.0–597.0 (Kentucky).
25. 2 days—Second or third weekend in October.	Norton Healthcare/Ironman Triathlon	Louisville, KY	Ohio River, Mile 601.5–604.5 (Kentucky).
26. 2 days—Third full weekend (Saturday and Sunday) in August.	Ohio County Tourism/Rising Sun Boat Races.	Rising Sun, IN	Ohio River, Mile 504.0–508.0 (Indiana and Kentucky).

TABLE 1 OF § 100.801—OHIO VALLEY CAPTAIN OF THE PORT ZONE ANNUAL AND RECURRING MARINE EVENTS—Continued

Date	Event/Sponsor	Ohio Valley location	Regulated area
27. 1 day—Last weekend in August	Tennessee Clean Water Network/Downtown Dragon Boat Races.	Knoxville, TN	Tennessee River, Mile 647.0–649.0 (Tennessee).
28. 3 days—Third weekend in August	Governors' Cup/UWP–IJSBA National Championships.	Charleston, WV	Kanawha River, Mile 56.7–57.6 (West Virginia).
29. 2 days—Fourth weekend in July	Herd Racing LLC/Huntington Classic	Huntington, WV	Ohio River, Mile 307.3–309.3 (West Virginia).
30. 2 days—Last weekend in September.	Fall Records Challenge Committee/Fall Records Challenge.	New Martinsville, WV.	Ohio River, Mile 128.5–129.5 (West Virginia).
31. 2 days—Labor Day weekend	Wheeling Vintage Race Boat Association Ohio/Wheeling Vintage Regatta.	Wheeling, WV	Ohio River, Mile 090.4–091.5 (West Virginia).
32. 2 days—weekend before Labor Day.	SUP3Rivers The Southside Outside	Pittsburgh, PA	Monongahela River, Mile 0.0–3.09 Allegheny River Mile 0.0–0.25 (Pennsylvania).
33. 1 day—Saturday before Labor Day	Wheeling Dragon Boat Race	Wheeling, WV	Ohio River, Mile 90.4–91.5 (West Virginia).
34. 1 day—First or second weekend in September.	Cumberland River Compact/Cumberland River Dragon Boat Festival.	Nashville, TN	Cumberland River, Mile 190.0–192.0 (Tennessee).
35. 2 days—First or second weekend in September.	State Dock/Cumberland Poker Run	Jamestown, KY	Lake Cumberland (Kentucky).
36. 3 days—First or second weekend in September.	Sailing for a Cure Foundation/SFAC Fleur de Lis Regatta.	Louisville, KY	Ohio River, Mile 601.0–604.0 (Kentucky).
37. 1 day—One weekend, last half of September.	Harbor House of Louisville/Ken"Ducky" Derby.	Louisville, KY	Ohio River, Mile 602.0–604.0 (Kentucky).
38. 1 day—Last weekend in September.	World Triathlon Corporation/IRONMAN Chattanooga.	Chattanooga, TN	Tennessee River, Mile 463.0–467.0 (Tennessee).
39. 1 day—Second weekend in September.	City of Clarksville/Clarksville Riverfest Cardboard Boat Regatta.	Clarksville, TN	Cumberland River, Mile 125.0–126.0 (Tennessee).
40. 2 days—First weekend of October	Three Rivers Rowing Association/Head of the Ohio Regatta.	Pittsburgh, PA	Allegheny River, Mile 0.0–4.0 (Pennsylvania).
41. 1 day—First or second weekend in October.	Lookout Rowing Club/Chattanooga Head Race.	Chattanooga, TN	Tennessee River, Mile 464.0–467.0 (Tennessee).
42. 1 day—Third weekend in November.	TREC–RACE/Pangorge	Chattanooga, TN	Tennessee River, Mile 444.0–455.0 (Tennessee).
43. 3 days—First weekend in November.	Atlanta Rowing Club/Head of the Hooch Rowing Regatta.	Chattanooga, TN	Tennessee River, Mile 464.0–467.0 (Tennessee).
44. One Saturday in June or July	Paducah Summer Festival/Cross River Swim.	Paducah, KY	Ohio River, Mile 934–936 (Kentucky).
45. 1 day—During the last weekend in May.	Louisville Metro Government/Mayor's Healthy Hometown Subway Fresh Fit, Hike, Bike and Paddle.	Louisville, KY	Ohio River, Mile 602.0–603.5 (Kentucky).
46. 3 days—Second or third weekend in June.	Hadi Shrine/Evansville Freedom Festival Air Show.	Evansville, IN	Ohio River, Mile 791.0–795.0 (Indiana).
47. 1 day—Second or third Saturday in July.	Allegheny Mountain LMSC/Search for Monongy.	Pittsburgh, PA	Allegheny River, Mile 0.0–0.6 (Pennsylvania).
48. 1 day—July 4th	Wellsburg 4th of July Committee/Wellsburg 4th of July Fireworks.	Wellsburg, WV	Ohio River, Mile 73.5–74.5 (West Virginia).
49. 1 day—During the first week of July.	Evansville Freedom Celebration/4th of July Freedom Celebration.	Evansville, IN	Ohio River, Mile 791.0–796.0 (Indiana).
50. 1 day—First weekend in September.	Louisville Metro Government/Mayor's Healthy Hometown Subway Fresh Fit, Hike, Bike and Paddle.	Louisville, KY	Ohio River, Mile 602.0–603.5 (Kentucky).
51. 2 days—Third or fourth weekend in July.	Dare to Care/KFC Mayor's Cup Paddle Sports Races/Voyageur Canoe World Championships.	Louisville, KY	Ohio River, Mile 601.0–604.0 (Kentucky).
52. 3 days—Fourth weekend in August	Kentucky Drag Boat Association/Thunder on the Green.	Livermore, KY	Green River, Mile 70.0–71.5 (Kentucky).
53. 1 day—Fourth weekend in August	Team Rocket Tri-Club/Rocketman Triathlon.	Huntsville, AL	Tennessee River, Mile 333.0–334.5 (Alabama).
54. 3 days—One of the last three weekends in September.	Hadi Shrine/Owensboro Air Show	Owensboro, KY	Ohio River, Mile 755.0–759.0 (Kentucky).
55. 1 day—First Sunday in August	HealthyHuntington.org/St. Marys Tri-state Triathlon.	Huntington, WV	Ohio River, Mile 307.3–308.3 (West Virginia).
56. 2 days—First Weekend in August	Buckeye Outboard Association/Portsmouth Challenge.	Portsmouth, OH	Ohio River, Mile 355.3–356.7 (Ohio).
57. 1 day—Sunday before Labor Day	Cincinnati Bell, WEBN, and Proctor and Gamble/Riverfest.	Cincinnati, OH	Ohio River, Mile 464.0–476.0 (Kentucky and Ohio) and Licking River Mile 0.0–3.0 (Kentucky).
58. 2 days—First or second weekend in September.	State Dock/Cumberland Poker Run	Jamestown, KY	Lake Cumberland (Kentucky).
59. 1 day—One weekend, last half of September.	Harbor House of Louisville/Ken"Ducky" Derby.	Louisville, KY	Ohio River, Mile 602.0–604.0 (Kentucky).

TABLE 1 OF § 100.801—OHIO VALLEY CAPTAIN OF THE PORT ZONE ANNUAL AND RECURRING MARINE EVENTS—Continued

Date	Event/Sponsor	Ohio Valley location	Regulated area
60. Second Sunday in September	Ohio River Sternwheel Festival Committee Sternwheel race reenactment.	Marietta, OH	Ohio River, Mile 170.5–172.5 (Ohio).
61. Second Saturday in September	Parkesburg Paddle Fest	Parkersburg, WV	Ohio River, Mile 184.3–188 (West Virginia).
62. Three days during the fourth weekend in September.	New Martinsville Records and Regatta Challenge Committee.	New Martinsville, WV.	Ohio River, Mile 128–129 (West Virginia).
63. First weekend in July	Eddyville Creek Marina/Thunder Over Eddy Bay.	Eddyville, KY	Cumberland River Mile 46.0–47.0 (Kentucky).
64. First or second weekend of July	Prizer Point Marina/4th of July Celebration.	Cadiz, KY	Cumberland River, Mile 54.0–55.09 (Kentucky).
65. 2 days, last weekend in May or first weekend in June.	Visit Knoxville/Racing on the Tennessee	Knoxville, TN	Tennessee River, Mile 647.0–648.0 (Tennessee).
66. 1 day—Second weekend in September.	Start 2 Finish/Nashvegas Triathlon	Ashland City, TN	Cumberland River, Mile 157.0–159.0 (Tennessee).

* * * * *

Dated: May 20, 2016.

R.V. Timme,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2016–14277 Filed 6–15–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0395]

RIN 1625–AA08

Special Local Regulation; Ohio River Mile 791.0 to 795.0, Evansville, IN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for all waters of the Ohio River, surface to bottom, extending from mile 791.0 to 795.0. This action is necessary to provide for the safety of life on these navigable waters near Evansville, IN, during the Evansville Freedom Festival Air Show. Entry of vessels or persons into this regulated area is prohibited unless specifically authorized by the Captain of the Port or a designated representative.

DATES: This rule is effective from 11:00 a.m., June 24, 2016 through 6:00 p.m., June 26, 2016. This rule will be enforced through actual notice.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0395 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Petty Officer James Robinson, Sector Ohio Valley, U.S. Coast Guard; telephone 502–779–5347, email *James.C.Robinson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On January 25, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Sector Ohio Valley Annual and Recurring Special Local Regulations Update (81 FR 3976). That proposed rulemaking included expanding the date for this event and related special local regulation in the permanent list of recurring events under 33 CFR 100.801, Table 1, from 3 days to 4 days during the second or third weekend in June. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action. The NPRM received no adverse comments and the comment period closed April 25, 2016. However, during the comment period for the NPRM, the sponsor of the Hadi Shrine/Evansville Freedom Festival Air Show informed us that the air show portion of the event would continue to take place for only 3 days, including a practice day. Therefore, there is no need to extend the effective period from 3 to 4 days for this event. However, for the 2016 occurrence the festival dates fall on the fourth weekend in June, so this temporary final rule is being issued for the 2016 occurrence only. It is impracticable to publish an NPRM at this time because this temporary final rule is necessary to establish the special local regulation for this year's occurrence beginning June 24, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register.** Delaying this rule to provide a full 30 days notice is unnecessary as this event is a recurring event advertised to, and planned on, by the local community and waterway users that are familiar with this location on the Ohio River. Delaying this rule would also be contrary to public interest because immediate action is necessary for the safety of life during an air show taking place over this navigable waterway. Broadcast Notices to Mariners (BNM) and information sharing with the waterway users will update mariners of the restrictions, requirements and enforcement times during this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Ohio Valley (COTP) has determined that potential hazards associated with the air show starting June 24, 2016 will be a safety concern for all waters of the Ohio River, surface to bottom, extending from mile 791.0 to 795.0. The purpose of this rule is to ensure safety of life on the navigable waters in the temporary regulated area before, during, and after the Evansville Freedom Festival Air Show.

IV. Discussion of the Rule

This rule establishes a special local regulation from June 24 through June 26, 2016. The special local regulation will cover all waters of the Ohio River, surface to bottom, extending from mile 791.0 to 795.0. Transit into and through this area is prohibited from 11:00 a.m. to 6:00 p.m. each day beginning June 24, 2016 through June 26, 2016. The duration of the special local regulation is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled air show and fireworks displays. No vessel or person will be permitted to enter the special local regulation without obtaining permission from the COTP or a designated representative. Deviations request will be considered and reviewed on a case-by-case basis. The COTP Ohio Valley may be contacted by telephone at 1–800–253–7475 or can be reached by VHF–FM channel 16. Public notifications will be made to the local maritime community prior to the event through the Local Notice to Mariners, and Broadcast Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the special local regulation. The temporary special local regulation will only be in effect for approximately seven hours each day. The Coast Guard expects minimum adverse impact to mariners from the special local regulation's activation as the event has been advertised to the public. Also, mariners may request authorization from the COTP Ohio Valley or the designated representatives to transit the special local regulations.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the special local regulation may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting less than seven hours a day that will prohibit entry on all waters of the Ohio River, surface to bottom, extending from mile 791.0 to 795.0. It is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

■ 2. Add § 100.T08–0395 to read as follows:

§ 100.T08–0395 Special Local Regulation; Ohio River between mile 791.0 and 795.0, Evansville, IN.

(a) *Special local regulated area.* The following area is a temporary special local regulation for all waters of the Ohio River between mile 791.0 and mile 795.0, Evansville, IN, extending the entire width of the Ohio River.

(b) *Enforcement.* This special local regulation will be enforced from 11:00 a.m. until 6:00 p.m. each day beginning June 24, 2016 through June 26, 2016. For purposes of enforcement, actual notice will be provided.

(c) *Special local regulations.* (1) Persons or vessels desiring to enter into or passage through the regulated area must request permission from the COTP Ohio Valley or a designated representative. They may be contacted on VHF–FM radio channel 16 or phone at 1–800–253–7465.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted via VHF–FM radio channel 16 or by phone at 502–587–8633.

(3) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(d) *Informational broadcasts.* The COTP Ohio Valley or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the regulated area as well as any changes in the planned schedule.

Dated: May 26, 2016.

E.D. Denley,

Commander, U.S. Coast Guard, Acting Captain of the Port Ohio Valley.

[FR Doc. 2016–14271 Filed 6–15–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0443]

Safety Zone; Annual Firework Events on the Colorado River, Between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona) Within the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the Laughlin/Bullhead City Rockets Over the River Fireworks on the Colorado River in Laughlin, Nevada and Bullhead City, Arizona on Saturday, July 2, 2016 and Monday, July 4, 2016. This safety zone is necessary to provide for the safety of the participants, spectators, official vessels of the event, and general users of the waterway. Our regulation for annual fireworks events on the Colorado River within the San Diego Captain of the Port Zone identifies the regulated area for this event. During the enforcement period, no spectators shall anchor, block, loiter in, or impede the transit of official patrol vessels in the regulated area without the approval of the Captain of the Port, or designated representative.

DATES: The regulations in 33 CFR 165.1124 will be enforced from 8 p.m. through 10 p.m. on July 2 and July 4, 2016, for Item 2 in Table 1 of § 165.1124.

FOR FURTHER INFORMATION CONTACT: If you have questions on this publication, call or email Petty Officer Randolph Pahilanga, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the regulations in 33 CFR 165.1124 for a safety zone on the Colorado River in Laughlin, Nevada and Bullhead City, Arizona for the Laughlin/Bullhead City Rockets Over the River Fireworks in 33 CFR 165.1124, Table 1, Item 2 of that section from 8 p.m. through 10 p.m. on July 2 and July 4, 2016. This enforcement action is being taken to provide for the safety of life on navigable waterways during the fireworks event. Our regulation for annual fireworks events on the Colorado River within the San Diego Captain of the Port Zone identifies the regulated entities for this event. Under the provisions of 33 CFR 165.1124, a vessel may not enter the regulated area, unless it receives permission from the Captain of the Port, or his designated representative. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter, or impede the transit of participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or Local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 33 CFR 165.1124 and 5 U.S.C. 552(a). In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and local advertising by the event sponsor.

If the Captain of the Port or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: June 2, 2106.

E.M. Cooper,

Commander, U. S. Coast Guard, Acting Captain of the Port San Diego.

[FR Doc. 2016–14274 Filed 6–15–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0408]

Safety Zone; Annual Firework Events on the Colorado River, Between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona) Within the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the Avi Resort and Casino Independence Day Fireworks display on the Colorado River in Laughlin, Nevada on Monday, July 4, 2016. This safety zone is necessary to provide for the safety of the participants, spectators, official vessels of the event, and general users of the waterway. Our regulation for annual firework events on the Colorado River within the San Diego Captain of the Port Zone identifies the regulated area for

this event. During the enforcement period, no spectators shall anchor, block, loiter in, or impede the transit of official patrol vessels in the regulated area without the approval of the Captain of the Port, or a designated representative.

DATES: The regulations in 33 CFR 165.1124 will be enforced from 8 p.m. through 10 p.m. on July 4, 2016, for Item 3 in Table 1 of § 165.1124.

FOR FURTHER INFORMATION CONTACT: If you have questions on this publication, call or email Petty Officer Randolph Pahilanga, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the regulations in 33 CFR 165.1124 for a safety zone on the Colorado River in Laughlin, Nevada for the Avi Resort and Casino Independence Day Fireworks in 33 CFR 165.1124, Table 1, Item 3 of that section, from 8 p.m. through 10 p.m. on July 4, 2016. This enforcement action is being taken to provide for the safety of life on navigable waterways during the fireworks event. Our regulation for annual fireworks events on the Colorado River within the San Diego Captain of the Port Zone identifies the regulated entities for the this event. Under the provisions of 33 CFR 165.1124, a vessel may not enter the regulated area, unless it receives permission from the Captain of the Port, or his designated representative. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter, or impede the transit of participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or Local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 33 CFR 165.1124 and 5 U.S.C. 552(a). In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and local advertising by the event sponsor.

If the Captain of the Port or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: June 2, 2016.

E.M. Cooper,

Commander, U.S. Coast Guard, Acting Captain of the Port San Diego.

[FR Doc. 2016–14273 Filed 6–15–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0476]

Safety Zones, Recurring Marine Events in Captain of the Port Long Island Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce four safety zones for fireworks displays in the Sector Long Island Sound area of responsibility on the date and time listed in the table below. This action is necessary to provide for the safety of life on navigable waterways during the events. During the enforcement periods, no person or vessel may enter the safety zones without permission of the Captain of the Port (COTP) Sector Long Island Sound or designated representative.

DATES: The regulation in 33 CFR 165.151 Table 1 will be enforced on the dates and times listed in the table in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call or email Petty Officer Jay TerVeen, Waterways Management Division, U.S. Coast Guard Sector Long Island Sound; telephone 203–468–4446, email *Jay.C.TerVeen@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone listed in 33 CFR 165.151 Table 1 on the following dates and times:

6.1	Barnum Festival Fireworks	• Date: June 25, 2016. • Rain Date: June 26, 2016. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of Bridgeport Harbor, Bridgeport, CT in approximate position 41°9′04″ N., 073°12′49″ W. (NAD 83).
6.2	Town of Branford Fireworks	• Date: June 25, 2016. • Rain Date: June 26, 2016. • Time: 9:30 p.m. to 10:30 p.m. • Location: Waters of Branford Harbor, Branford, CT in approximate position, 41°15′30″ N., 072°49′22″ W. (NAD 83).
6.3	Vietnam Veterans/Town of East Haven Fireworks	• Date: June 25, 2016. • Rain Date: June 27, 2016. • Time: 9:00 p.m. to 11:00 p.m. • Location: Waters off Cosey Beach, East Haven, CT in approximate position, 41°14′19″ N., 072°52′9.8″ W. (NAD 83).
7.8	Westport Police Athletic League Fireworks	• Date: June 30, 2016. • Rain Date: July 01, 2016. • Time: 8:45 p.m. to 10:20 p.m. • Location: Waters off Compo Beach, Westport, CT in approximate position, 41°06′15″ N., 073°20′57″ W. (NAD 83).

Under the provisions of 33 CFR 165.151, the fireworks displays listed above are established as safety zones. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, mooring, or anchoring within these safety zones unless they receive permission from the COTP or designated representative.

This notice of enforcement is issued under authority of 33 CFR part 165 and

5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners or marine information broadcasts. If the COTP determines that these safety zones need not be enforced for the full duration stated in this notice of enforcement, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 3, 2016.

E.J. Cubanski, III,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2016–14272 Filed 6–15–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0410]

Safety Zone; Southern California Annual Fireworks for the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zones for the Big Bay Boom Fourth of July Fireworks on the waters of San Diego Bay, CA on Monday, July 4, 2016. These safety zones are necessary to provide for the safety of the participants, spectators, official vessels of the event, and general users of the waterway. Our regulation for the southern California annual fireworks for the San Diego Captain of the Port Zone identifies the regulated areas for this event. During the enforcement period, no spectators shall anchor, block, loiter in, or impede the transit of participants or official patrol vessels in the regulated areas without the approval of the Captain of the Port, or designated representative.

DATES: The regulations in 33 CFR 165.1123 will be enforced from 8 p.m. through 10 p.m. on July 4, 2016 for Item 5 in Table 1 of § 165.1123.

FOR FURTHER INFORMATION CONTACT: If you have questions on this publication, call or email Petty Officer Randolph Pahilanga, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the regulations in 33 CFR 165.1123 for safety zones on the waters of San Diego Bay, CA for the Big Bay Boom Fourth of July Fireworks in 33 CFR 165.1123, Table 1, Item 5 of that section from 8 p.m. through 10 p.m. on July 4, 2016. This enforcement action is being taken to provide for the safety of life on navigable waterways during the fireworks event. Our regulation for southern California annual fireworks for the San Diego Captain of the Port Zone identifies the regulated entities for this event. Under the provisions of 33 CFR 165.1123, a vessel may not enter the regulated areas, unless it receives permission from the Captain of the Port, or his designated representative. Spectator vessels may safely transit outside the regulated areas but may not anchor, block, loiter, or impede the transit of participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or Local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 33 CFR 165.1123 and 5 U.S.C. 552(a). In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and local advertising by the event sponsor.

If the Captain of the Port or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: June 2, 2016.

E.M. Cooper,

Commander, U.S. Coast Guard, Acting Captain of the Port San Diego.

[FR Doc. 2016–14278 Filed 6–15–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0409]

Safety Zone; Southern California Annual Fireworks for the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the Coronado Glorietta Bay Fourth of July Fireworks on the waters of Glorietta Bay, CA on Monday, July 4, 2016. This safety zone is necessary to provide for the safety of the participants, spectators, official vessels of the event, and general users of the waterway. Our regulation for the southern California annual fireworks for the San Diego Captain of the Port Zone identifies the regulated area for this event. During the enforcement period, no spectators shall anchor, block, loiter in, or impede the transit of participants or official patrol vessels in the regulated area without the approval of the Captain of the Port, or designated representative.

DATES: The regulations in 33 CFR 165.1123 will be enforced from 8 p.m. through 10 p.m. on July 4, 2016, Item 3 in Table 1 of § 165.1123.

FOR FURTHER INFORMATION CONTACT: If you have questions on this publication, call or email Petty Officer Randolph Pahilanga, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the regulations in 33 CFR 165.1123 for a safety zone on the waters of Glorietta Bay, CA for the Coronado Glorietta Bay Fourth of July Fireworks in 33 CFR 165.1123, Table 1, Item 3, from 8 p.m. through 10 p.m. on July 4, 2016. This enforcement action is being taken to provide for the safety of life on navigable waterways during the fireworks event. Our regulation for southern California annual fireworks for the San Diego Captain of the Port Zone identifies the regulated entities for this event. Under the provisions of 33 CFR 165.1123, a vessel may not enter the regulated areas, unless it receives permission from the Captain of the Port, or his designated representative. Spectator vessels may safely transit outside the regulated areas but may not anchor, block, loiter, or impede the transit of participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or Local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 33 CFR 165.1123 and 5 U.S.C. 552(a). In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and local advertising by the event sponsor.

If the Captain of the Port or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: June 2, 2016.

E.M. Cooper,

Commander, U.S. Coast Guard, Acting Captain of the Port San Diego.

[FR Doc. 2016–14270 Filed 6–15–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED–2015–OPE–0134]

Final Priorities and Definitions—Fulbright-Hays Group Projects Abroad Program—Short-Term Projects and Long-Term Projects

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final priorities and definitions.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.021A and 84.021B.

SUMMARY: The Assistant Secretary for Postsecondary Education announces priorities and definitions for the Fulbright-Hays Group Projects Abroad (GPA) Program. The Assistant Secretary may use these priorities and definitions for competitions in fiscal year (FY) 2016 and later years. We intend the priorities and definitions to address a gap in the types of institutions, faculty, and students that have historically benefitted from international education opportunities.

DATES: These priorities and definitions are effective July 18, 2016.

FOR FURTHER INFORMATION CONTACT: Reha Mallory, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E213, Washington, DC 20202. Telephone: (202) 453–7502 or by email: *Reha.Mallory@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The Fulbright-Hays GPA Program supports short-term and long-term overseas projects in training, research, and curriculum development in modern foreign languages and area studies for groups of teachers, undergraduate and graduate students, and faculty engaged in a common endeavor. Fulbright-Hays GPA short-term projects (GPA short-term projects) may include seminars, curriculum development, or group research or study. Fulbright-Hays GPA long-term projects (GPA long-term projects) support advanced overseas intensive programs that focus on the humanities, social sciences, or languages.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Program Regulations: 34 CFR part 662 and 664.

We published a notice of proposed priorities and definitions for this program in the **Federal Register** on March 10, 2016 (81 FR 12622). That notice contained background information and our reasons for proposing the particular priorities.

There are no differences between the proposed priorities and definitions and these final priorities and definitions.

Public Comment: In response to our invitation in the notice of proposed priorities and definitions, we did not receive any comments on the proposed priorities and definitions.

Final Priorities

Priority 1—Applications for GPA Short-Term Projects From Selected Institutions and Organizations

Applications for GPA short-term projects from the following types of institutions and organizations:

- Minority-Serving Institutions (MSIs)
- Community colleges
- New applicants
- State educational agencies (SEAs)

Priority 2—Applications for GPA Long-Term Projects From Minority-Serving Institutions (MSIs)

Applications for GPA long-term advanced overseas intensive language training projects from MSIs.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Definitions

The Assistant Secretary for Postsecondary Education establishes the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

Minority-serving institution (MSI) means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the Higher Education Act of 1965, as amended (HEA).

Community college means an institution that meets the definition in section 312(f) of the Higher Education Act of 1965, as amended, (HEA) (20 U.S.C. 1058(f)); or an institution of higher education (as defined in section 101 of the HEA (20 U.S.C. 1001)) that awards degrees and certificates, more than 50 percent of which are not bachelor's degrees (or an equivalent).

New applicant means any applicant that has not received a discretionary grant from the Department of Education under the Fulbright-Hays Act prior to the deadline date for applications under this program.

State educational agency (SEA) means the State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities and definitions, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive

Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these final priorities and final definitions only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 13, 2016.

Lynn B. Mahaffie,

Deputy Assistant Secretary for Policy, Planning, and Innovation, Delegated the Duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2016–14304 Filed 6–15–16; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2014–0309; FRL–9945–65–Region 8]

Air Plan Approval; UT; Revised Format for Material Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is revising the format of materials submitted by the State of Utah that are incorporated by reference (IBR) into its State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by Utah and approved by the EPA.

DATES: This action is effective June 16, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket Identification Number EPA–R08–OAR–2014–0309. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in the hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 8, Office of Partnerships and Regulatory Assistance, Air Program, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. An electronic copy of the State's SIP compilation is also available at *https://www.epa.gov/approved-sips.*

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Utah 80202–1129, (303) 312–6252, *dobrahner.jaslyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Change in IBR Format

This format revision will affect the "Identification of plan" section of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the National Archives and Records Administration (NARA) and the EPA Region 8 Office.

A. Description of a SIP

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS) and achieve certain other Clean Air Act (Act) requirements (*e.g.*, visibility requirements, prevention of significant deterioration). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring network descriptions, attainment demonstrations, and enforcement mechanisms.

B. How EPA Enforces the SIP

Each SIP revision submitted by Utah must be adopted at the state level after undergoing reasonable notice and public hearing. SIPs submitted to EPA to attain or maintain the NAAQS must include enforceable emission limitations and other control measures, schedules and timetables for compliance.

EPA evaluates submitted SIPs to determine if they meet the Act's requirements. If a SIP meets the Act's requirements, EPA will approve the SIP. EPA's notice of approval is published in the **Federal Register** and the approval is then codified at 40 CFR part 52. Once EPA approves a SIP, it is enforceable by EPA and citizens in federal district court.

We do not reproduce in 40 CFR part 52 the full text of the Utah regulations that we have approved. Instead, we incorporate them by reference or IBR. We approve a given state regulation with a specific effective date and then refer the public to the location(s) of the full text version of the state regulation(s) should they want to know which measures are contained in a given SIP (see I.F., *Where You Can Find a Copy of the SIP Compilation*).

C. How the State and EPA update the SIP

The SIP is a dynamic document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations.

On May 22, 1997 (62 FR 27968), EPA announced revised procedures for IBR of federally approved SIPs. The procedures announced included: (1) A new process for IBR of material submitted by states into compilations and a process for updating those compilations on roughly an annual basis; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the compilations and the CFR; and (3) a revised format for the "Identification of plan" sections for each applicable subpart to reflect these revised IBR procedures.

D. How EPA Compiles the SIP

We have organized into a compilation the federally-approved regulations, source-specific requirements and nonregulatory provisions we have approved into the SIP. These compilations may be found at *https://www.epa.gov/approved-sips.* In addition, we maintain hard copies of the compilation which are updated periodically.

E. How EPA Organizes the SIP Compilation

Each compilation contains three parts. Part one contains the state regulations that have been approved, part two contains the source-specific requirements that have been approved as part of the SIP (if any), and part three contains non-regulatory provisions that have been approved. Each compilation contains a table of identifying information for each regulation, each source-specific requirement, and each nonregulatory provision. The state effective dates in the tables indicate the date of the most recent revision to a particular approved regulation. The table of identifying information in the compilation corresponds to the table of contents published in 40 CFR part 52 for the state. The EPA Regional Offices have the primary responsibility for ensuring accuracy and updating the compilations.

F. Where You Can Find a Copy of the SIP Compilation

EPA Region 8 developed and will maintain the compilation for Utah. An electronic copy of the compilation is contained at *https://www.epa.gov/approved-sips.* SIP materials which are incorporated by reference into 40 CFR part 52 are also available for inspection at the following locations: National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html,* and the EPA Region 8 Office, 1595 Wynkoop Street, Denver, Colorado 80202.

G. The Format of the New Identification of Plan Section

In order to better serve the public, EPA has revised the organization of the "Identification of plan" section in 40 CFR part 52 and included additional information to clarify the elements of the SIP.

The revised Identification of plan section for Utah contains five subsections:

1. Purpose and scope (see 40 CFR 52.2320(a));

2. Incorporation by reference (see 40 CFR 52.2320(b));

3. EPA-approved regulations (see 40 CFR 52.2320(c));

4. EPA-approved source-specific requirements (see 40 CFR 52.2320(d)); and

5. EPA-approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc. (see 40 CFR 52.2320(e)).

H. When a SIP Revision Becomes Federally Enforceable

All revisions to the applicable SIP are federally enforceable as of the effective date of EPA's approval of the respective revision. In general, SIP revisions become effective 30 to 60 days after publication of EPA's SIP approval action in the **Federal Register**. In specific cases, a SIP revision action may become effective less than 30 days or greater than 60 days after the **Federal Register** publication date. In order to determine the effective date of EPA's approval for a specific Utah SIP provision that is listed in 40 CFR 52.2320 (c), (d), or (e), consult the volume and page of the **Federal Register** cited in 40 CFR 52.2320 for that particular provision.

I. The Historical Record of SIP Revision Approvals

To facilitate enforcement of previously approved SIP provisions and to provide a smooth transition to the new SIP processing system, we are retaining the original Identification of plan section (40 CFR 52.2324). This section previously appeared at 40 CFR 52.2320. After an initial two-year period, we will review our experience with the new table format and will decide whether to retain the original identification of plan section (40 CFR 52.2324) for some further period.

II. What EPA is doing in this action?

This action constitutes a "housekeeping" exercise to reformat the codification of the EPA-approved Utah SIP.

III. Good Cause Exemption

EPA has determined that this action falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon a finding of "good cause" authorizes agencies to dispense with public participation, and section 553(d)(3), which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This action simply reformats the codification of provisions which are already in effect as a matter of law.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Likewise, there is no purpose served by delaying the effective date of this action.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Utah regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in previous actions taken on the state's rules.

B. Submission to Congress and the Comptroller General

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This action simply codifies provisions which are already in effect as a matter of law in federal and approved state programs. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding and established an effective date of June 16, 2016. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This change to the identification of plan for Utah is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Utah SIP compilation had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" reorganization action for Utah.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 31, 2016.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart TT—Utah

§ 52.2320 [Redesignated as § 52.2324]

■ 2. Section 52.2320 is redesignated as § 52.2324, and in newly redesignated § 52.2320, revise the section heading and paragraph (a) to read as follows:

§ 52.2324 Original identification of plan.

(a) This section identifies the original "Air Implementation Plan for the State of Utah" and all revisions submitted by Utah that were federally approved prior to March 1, 2016.

* * * * *

■ 3. Add § 52.2320 to read as follows:

§ 52.2320 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State Implementation Plan for Utah under section 110 of the Clean Air Act, 42 U.S.C. 7410 and 40 CFR part 51 to meet national ambient air quality standards or other requirements under the Clean Air Act.

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to March 1, 2016, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as submitted by the state to EPA, and notice of any change in the material will be published in the **Federal Register**. Entries for paragraphs (c) and (d) of this section with EPA approval dates after March 1, 2016, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 8 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the State Implementation Plan as of March 1, 2016.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129; and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(c) *EPA-approved regulations.*

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
	R307–101. General Requirements			
R307–101–1	Foreward	11/8/2012	81 FR 4959, 1/29/16.	
R307–101–2	Definitions	2/1/2013	81 FR 9343, 2/25/16 ...	Includes nonsignificant change on 7/9/2013.
R307–101–3	Version of Code of Federal Regulations Incorporated by Reference.	8/7/2014	81 FR 4957, 1/29/16.	
	R307–102. General Requirements: Broadly Applicable Requirements			
R307–102	General Requirements: Broadly Applicable Requirements.	11/8/2012	81 FR 4959, 1/29/16.	
	R307–105. General Requirements: Emergency Controls			
R307–105–01 ...	Air Pollution Emergency Episodes	9/15/1998	71 FR 7679, 2/14/06.	
R307–105–02 ...	Emergency Actions	9/15/1998	71 FR 7679, 2/14/06.	
	R307–107. General Requirements: Breakdowns			
R307–107	General Requirements: Breakdowns	7/31/2012	79 FR 7067, 2/6/14.	
	R307–110. General Requirements: State Implementation Plan			
R307–110–01 ...	Incorporation by Reference	12/6/2012	80 FR 54237, 9/9/15.	
R307–110–02 ...	Section I. Legal Authority	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–03 ...	Section II. Review of New and Modified Air Pollution Sources.	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–04 ...	Section III. Source Surveillance	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–05 ...	Section IV. Ambient Air Monitoring Program	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–06 ...	Section V. Resources	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–07 ...	Section VI. Intergovernmental Cooperation	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–08 ...	Section VII. Prevention of Air Pollution Emergency Episodes.	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–09 ...	Section VIII. Prevention of Significant Deterioration.	6/16/2006	76 FR 41712, 7/15/11.	
R307–110–10 ...	Section IX. Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.	9/5/2002	67 FR 78181, 12/23/02.	
R307–110–11 ...	Section IX. Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–12 ...	Section IX. Control Measures for Area and Point Sources, Part C, Carbon Monoxide.	12/2/2004	70 FR 44055, 8/1/05 ...	Only includes provisions incorporated from Section IX, Parts C.6 (Provo), C.7 (Salt Lake City), and Part C.8 (Ogden).

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
R307–110–13	Section IX. Control Measures for Area and Point Sources, Part D. Ozone.	5/2/2007	73 FR 5122, 9/2/08.	
R307–110–14	Section IX. Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–15	Section IX. Control Measures for Area and Point Sources, Part F, Lead.	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–16	Section IX. Control Measures for Area and Point Sources, Part G, Flouride.	9/15/1998	79 FR 11325, 2/28/14.	
R307–110–17	Section IX. Control Measures for Area and Point Sources, Part H, Emissions Limits.	9/5/2002	67 FR 78181, 12/23/02.	
R307–110–19	Section XI. Other Control Measures for Mobile Sources.	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–20	Section XII. Transportation Conformity Consultation.	5/2/2007	73 FR 51222, 9/2/08.	
R307–110–21	Section XIII. Analysis of Plan Impact	5/2/2007	73 FR 51222, 9/2/08.	
R307–110–22	Section XIV. Comprehensive Emission Inventory.	9/18/1998	71 FR 7679, 2/14/06.	
R307–110–23	Section XV. Utah Code Title 19, Chapter 2, Air Conservation Act.	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–24	Section XVI. Public Notification	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–25	Section XVII. Visibility Protection	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–26	Section XVIII. Demonstration of GEP Stack Height.	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–27	Section XIX. Small Business Assistance Program.	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–30	Section XXII. General Conformity	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–31	Section X. Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.	12/6/2012	80 FR 54237, 9/9/15.	
R307–110–32	Section X. Vehicle Inspection and Maintenance Program, Part B, Davis County.	9/15/1998	71 FR 7679, 2/14/06.	
R307–110–33	Section X. Vehicle Inspection and Maintenance Programs, Part C, Salt Lake County.	10/7/2004	70 FR 44055, 8/1/05.	
R307–110–34	Section X. Vehicle Inspection and Maintenance Program, Part D, Utah County.	5/18/2004	70 FR 66264, 11/2/05.	
R307–110–35	Section X. Vehicle Inspection and Maintenance Program, Part E, Weber County.	11/4/2004	70 FR 52467, 9/14/05.	
R307–110–36	Section X. Vehicle Inspection and Maintenance Program, Part F, Cache County.	11/7/2013	80 FR 54237, 9/9/15.	
R307–110–37	Section XXIII. Interstate Transport	12/6/2012	81 FR 4959, 1/29/16.	
R307–115. General Conformity				
R307–115–01	Determining Conformity	2/8/2008	73 FR 51222, 9/2/08.	
R307–130. General Penalty Policy				
R307–130–01	Scope	9/15/1998	71 FR 7679, 2/14/06.	
R307–130–02	Categories	9/15/1998	71 FR 7679, 2/14/06.	
R307–130–03	Adjustments	9/15/1998	71 FR 7679, 2/14/06.	
R307–130–04	Options	7/13/2007	73 FR 16543, 3/28/08.	
R307–150. Emission Inventories				
R307–150–01	Purpose and General Requirements	12/31/2003	77 FR 74355, 12/14/12.	
R307–150–02	Definitions	12/31/2003	77 FR 74355, 12/14/12.	
R307–150–03	Applicability	12/31/2003	77 FR 74355, 12/14/12.	
R307–150–04	Sulfur Dioxide Milestone Inventory Requirements.	9/4/2008	77 FR 74355, 12/14/12.	
R307–150–05	Sources Identified in R307–150–3(2), Large Major Source Inventory Requirements.	12/31/2003	77 FR 74355, 12/14/12.	
R307–150–06	Sources Identified in R307–150–3(3)	12/31/2003	77 FR 74355, 12/14/12.	
R307–150–07	Sources Identified in R307–150–3(4), Other Part 70 Sources.	12/31/2003	77 FR 74355, 12/14/12.	
R307–150–08	Exempted Hazardous Air Pollutants	12/31/2003	77 FR 74355, 12/14/12.	
R307–165. Emission Testing				
R307–165	Emission Testing	9/15/1998	71 FR 7679, 2/14/06.	
R307–170. Continuous Emission Monitoring Program				
R307–170–01	Purpose	4/1/1999	68 FR 26210, 5/15/03.	
R307–170–02	Authority	4/1/1999	68 FR 26210, 5/15/03.	

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
R307–170–03	Applicability	4/1/1999	68 FR 26210, 5/15/03.	
R307–170–04	Definitions	1/5/2006	71 FR 64125, 11/1/06.	
R307–170–05	General Requirements	1/5/2006	71 FR 64125, 11/1/06.	
R307–170–06	Minimum Monitoring Requirements for Specific Sources.	4/1/1999	68 FR 26210, 5/15/03.	
R307–170–07	Performance Specification Audits	2/8/2008	73 FR 51222, 9/2/08.	
R307–170–08	Recordkeeping	4/1/1999	68 FR 26210, 5/15/03.	
R307–170–09	State Electronic Data Report	1/5/2006	71 FR 64125, 11/1/06.	
R307–201. Emission Standards: General Emission Standards				
R307–201	Emission Standards: General Emission Standards.	9/15/1998	71 FR 7679, 2/14/06.	
R307–202. Emission Standards: General Burning				
R307–202	Emission Standards: General Burning	9/15/1998	71 FR 7679, 2/14/06.	
R307–203. Emission Standards: Sulfur Content of Fuels				
R307–203	Emission Standards: Sulfur Content of Fuels	9/15/1998	71 FR 7679, 2/14/06.	
R307–204. Emission Standards: Smoke Management				
R307–204–01	Purpose and Goals	12/31/2003	78 FR 4071, 1/18/13.	
R307–204–02	Applicability	12/31/2003	78 FR 4071, 1/18/13.	
R307–204–03	Definitions	7/7/2011	78 FR 4071, 1/18/13.	
R307–204–04	General Requirements	4/7/2006	78 FR 4071, 1/18/13.	
R307–204–05	Burn Schedule	7/7/2011	78 FR 4071, 1/18/13.	
R307–204–06	Small Prescribed Fires (de minimis)	7/7/2011	78 FR 4071, 1/18/13.	
R307–204–07	Small Prescribed Pile Fires (de minimis)	7/7/2011	78 FR 4071, 1/18/13.	
R307–204–08	Large Prescribed Fires	7/7/2011	78 FR 4071, 1/18/13.	
R307–204–09	Large Prescribed Pile Fires	7/7/2011	78 FR 4071, 1/18/13.	
R307–204–10	Requirements for Wildland Fire Use Events	7/7/2011	78 FR 4071, 1/18/13.	
R307–206. Emission Standards: Abrasive Blasting				
R307–206	Emission Standards: Abrasive Blasting	9/15/1998	71 FR 7679, 2/14/06.	
R307–221. Emission Standards: Emission Controls for Existing Municipal Solid Waste Landfills				
R307–221–01	Purpose and Applicability	1/7/1999	74 FR 1899, 1/14/09.	
R307–250. Western Backstop Sulfur Dioxide Trading Program				
R307–250–01	Purpose	12/31/2003	77 FR 74355, 12/14/12.	
R307–250–02	Definitions	11/10/2008	77 FR 74355, 12/14/12.	
R307–250–03	WEB Trading Program Trigger	12/31/2003	77 FR 74355, 12/14/12.	
R307–250–04	WEB Trading Program Applicability	11/10/2008	77 FR 74355, 12/14/12.	
R307–250–05	Account Representative for WEB Sources	11/10/2008	77 FR 74355, 12/14/12.	
R307–250–06	Registration	11/10/2008	77 FR 74355, 12/14/12.	
R307–250–07	Allowance Allocations	11/10/2008	77 FR 74355, 12/14/12.	
R307–250–08	Establishment of Accounts	11/10/2008	77 FR 74355, 12/14/12.	
R307–250–09	Monitoring, Recordkeeping and Reporting	11/10/2008	77 FR 74355, 12/14/12.	
R307–250–10	Allowance Transfers	12/31/2003	77 FR 74355, 12/14/12.	
R307–250–11	Use of Allowances from a Previous Year	12/31/2003	77 FR 74355, 12/14/12.	
R307–250–12	Compliance	11/10/2008	77 FR 74355, 12/14/12.	
R307–250–13	Special Penalty Provisions for the 2018 Milestone.	12/31/2003	77 FR 74355, 12/14/12.	
R307–301. Utah and Weber Counties: Oxygenated Gasoline Program				
R307–301–3	Average Oxygen Content Standard	9/10/2001	67 FR 59165, 9/20/02.	
R307–302. Davis, Salt Lake, and Utah Counties: Residential Fireplaces and Stoves				
R307–302–01	Definitions	9/15/1998	71 FR 7679, 2/14/06.	
R307–302–02	No-Burn Periods for PM_{10}	9/15/1998	71 FR 7679, 2/14/06	Except R307–302–2(4).
R307–302–03	No-Burn Periods for Carbon Monoxide	9/15/1998	70 FR 66264, 11/2/05.	
R307–302–04	Violations	9/15/1998	70 FR 66264, 11/2/05.	
R307–303. Commercial Cooking				
R307–303	Commercial Cooking	4/10/2013	81 FR 9343, 2/25/16.	

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
R307–305. Davis, Salt Lake, and Utah Counties and Ogden City, and Nonattainment Areas for PM_{10}: Particulates				
R307–305	Davis, Salt Lake, and Utah Counties and Ogden City, and Nonattainment Areas for PM_{10}: Particulates.	9/15/1998	71 FR 7679, 2/14/06.	
R307–307. Road Salting and Sanding				
R307–307	Road Salting and Sanding	2/1/2013	81 FR 9343, 2/25/16.	
R307–310. Salt Lake County: Trading of Emission Budgets for Transportation Conformity				
R307–310–01 ...	Purpose	5/13/2002	67 FR 44065, 7/1/02.	
R307–310–02 ...	Definitions	2/8/2008	73 FR 51222, 9/2/08.	
R307–310–03 ...	Applicability	5/13/2002	67 FR 44065, 7/1/02.	
R307–311. Utah County: Trading of Emission Budgets for Transportation Conformity				
R307–311	Utah County: Trading of Emission Budgets for Transportation Conformity.	3/5/2015	80 FR 28193, 5/18/15.	
R307–312. Aggregate Processing Operations for $PM_{2.5}$; Nonattainment Areas				
R307–312	Aggregate Processing Operations for $PM_{2.5}$ Nonattainment Areas.	2/1/2013	81 FR 9343, 2/25/16 ...	Except R307–312–5(2)(a) which is conditionally approved through February 25, 2017.
R307–312–5(2)(a).	R307–312–5(2)(a)	2/1/2013	81 FR 9343, 2/25/16 ...	Conditionally approved through February 25, 2017.
R307–325. Ozone Nonattainment and Maintenance Areas: General Requirements				
R307–325	Ozone Nonattainment and Maintenance Areas: General Requirements.	3/9/2007	78 FR 59242, 9/26/13.	
R307–326. Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries				
R307–326	Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries.	3/9/2007	78 FR 59242, 9/26/13.	
R307–327. Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage				
R307–327	Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage.	3/9/2007	78 FR 59242, 9/26/13.	
R307–328. Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties: Gasoline Transfer and Storage				
R307–328	Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties: Gasoline Transfer and Storage.	6/7/2011	81 FR 9343, 2/25/16 ...	Except R307–328–4(6) which has been conditionally approved through February 25, 2017.
R307–328–4(6)	R307–328–4(6)	6/7/2011	81 FR 9343, 2/25/16 ...	Provision is conditionally approved through February 25, 2017.
R307–335. Degreasing and Solvent Cleaning Operations				
R307–335	Degreasing and Solvent Cleaning Operations ...	1/1/2013	81 FR 9343, 2/25/16.	
R307–340. Ozone Nonattainment and Maintenance Areas: Surface Coating Processes				
R307–340	Ozone Nonattainment and Maintenance Areas: Surface Coating Processes.	3/9/2007	78 FR 59242, 9/26/13.	
R307–341. Ozone Nonattainment and Maintenance Areas: Cutback Asphalt				
R307–341	Ozone Nonattainment and Maintenance Areas: Cutback Asphalt.	1/16/2007	78 FR 59242, 9/26/13.	
R307–342. Adhesives and Sealants				
R307–342	Adhesives and Sealants	8/1/2013	81 FR 9343, 2/25/16.	

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
R307–343. Emissions Standards for Wood Furniture Manufacturing Operations				
R307–343	Emissions Standards for Wood Furniture Manufacturing Operations.	5/1/2013	81 FR 9343, 2/25/16.	
R307–344. Paper, Film, and Foil Coatings				
R307–344	Paper, Film, and Foil Coatings	2/1/2013	81 FR 9343, 2/25/16.	
R307–345. Fabric and Vinyl Coatings				
R307–345	Fabric and Vinyl Coatings	2/1/2013	81 FR 9343, 2/25/16.	
R307–346. Metal Furniture and Surface Coatings				
R307–346	Metal Furniture Surface Coatings	2/1/2013	81 FR 9343, 2/25/16.	
R307–347. Large Appliance Surface Coatings				
R307–347	Large Appliance Surface Coatings	2/1/2013	81 FR 9343, 2/25/16.	
R307–348. Magnet Wire Coatings				
R307–348	Magnet Wire Coatings	2/1/2013	81 FR 9343, 2/25/16.	
R307–349. Flat Wood Panel Coatings				
R307–349	Flat Wood Panel Coatings	2/1/2013	81 FR 9343, 2/25/16.	
R307–350. Miscellaneous Metal Parts and Products Coatings				
R307–350	Miscellaneous Metal Parts and Products Coatings.	2/3/2013	81 FR 9343, 2/25/16.	
R307–351. Graphic Arts				
R307–351	Graphic Arts	2/1/2013	81 FR 9343, 2/25/16	Except R307–351–2 and R307–351–4.
R307–351–2	Applicability	10/8/2014	81 FR 9343, 2/25/16.	
R307–351–4	Standards for Rotogravure, Flexographic, and Specialist Pring Operations.	2/15/2013	81 FR 9343, 2/25/16.	
R307–352. Metal Container, Closure, and Coil Coatings				
R307–352	Metal Container, Closure, and Coil Coatings	2/1/2013	81 FR 9343, 2/25/16.	
R307–353. Plastic Parts Coatings				
R307–353	Plastic Parts Coatings	5/1/2013	81 FR 9343, 2/25/16.	
R307–354. Automotive Refinishing Coatings				
R307–354	Automotive Refinishing Coatings	2/1/2013	81 FR 9343, 2/25/16.	
R307–355. Control of Emissions From Aerospace Manufacture and Rework Facilities				
R307–355	Control of Emissions from Aerospace Manufacture and Rework Facilities.	2/1/2013	81 FR 9343, 2/25/16.	
R307–355–5	Emission standards	2/15/2013	81 FR 9343, 2/25/16.	
R307–356. Appliance Pilot Light				
R307–356	Appliance Pilot Light	1/1/2013	81 FR 9343, 2/25/16.	
R307–357. Consumer Products				
R307–357	Consumer Products	8/1/2013	81 FR 9343, 2/25/16	Except R307–357–4.
R307–357–4	Standards	5/8/2014	81 FR 9343, 2/25/16.	
R307–361. Architectural Coatings				
R307–361	Architectural Coatings	10/31/2013	81 FR 9343, 2/25/16.	

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
R307–401. Permit: New and Modified Sources				
R307–401–01	Purpose	6/16/2006	79 FR 7072, 2/6/14.	
R307–401–02	Definitions	6/16/2006	79 FR 7072, 2/6/14.	
R307–401–03	Applicability	6/16/2006	79 FR 7072, 2/6/14.	
R307–401–04	General Requirements	6/16/2006	79 FR 7072, 2/6/14.	
R307–401–05	Notice of Intent	6/16/2006	79 FR 7072, 2/6/14.	
R307–401–06	Review Period	6/16/2006	79 FR 7072, 2/6/14.	
R307–401–07	Public Notice	10/3/2013	81 FR 4959, 1/29/16.	
R307–401–08	Approval Order	6/16/2006	79 FR 7072, 2/6/14.	
R307–401–09	Small Source Exemption	1/1/2011	79 FR 7070, 2/6/14.	
R307–401–10	Source Category Exemptions	6/16/2006	79 FR 7072, 2/6/14.	
R307–401–11	Replacement-in-Kind Equipment	6/16/2006	79 FR 7072, 2/6/14.	
R307–401–13	Plantwide Applicability Limits	6/16/2006	79 FR 7072, 2/6/14.	
R307–401–14	Used Oil Fuel Burned for Energy Recovery	2/8/2008	79 FR 27190, 5/13/14.	
R307–401–15	Air Strippers and Soil Venting Projects	2/7/2013	81 FR 4957, 1/29/16.	
R307–401–16	De minimis Emissions From Soil Aeration Projects.	6/16/2006	79 FR 27190, 5/13/14.	
R307–401–17	Temporary Relocation	6/16/2006	79 FR 7072, 2/6/14.	
R307–401–18	Eighteen Month Review	6/16/2006	79 FR 7072, 2/6/14.	
R307–401–19	Analysis of Alternatives	6/16/2006	79 FR 7072, 2/6/14.	
R307–401–20	Relaxation of Limitations	6/16/2006	79 FR 7072, 2/6/14.	
R307–403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas				
R307–403	Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas.	9/15/1998	71 FR 7679, 2/14/06.	
R307–405. Permits: Major Sources in Attainment or Unclassified Areas (PSD)				
R307–405–01	Purpose	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–02	Applicability	2/5/2009	81 FR 4957, 1/29/16.	
R307–405–03	Definitions	1/1/2011	79 FR 7070, 2/6/14	Except (2)(a), (b), (f), (5), and (6).
R307–405–04	Area Designations	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–05	Area Redesignation	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–06	Ambient Air Increments	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–07	Ambient Air Ceilings	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–08	Exclusions from Increment Consumption	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–09	Stack Heights	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–10	Exemptions	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–11	Control Technology Review	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–12	Source Impact Analysis	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–13	Air Quality Models	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–14	Air Quality Analysis	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–15	Source Information	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–16	Additional Impact Analysis	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–17	Sources Impacting Federal Class I Areas: Additional Rquirements.	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–18	Public Participation	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–19	Source Obligation	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–20	Innovative Control Technology	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–21	Actuals PALs	9/7/2007	76 FR 41712, 7/15/11.	
R307–405–22	Banking of Emission Offset Credit in PSD Areas	9/7/2007	76 FR 41712, 7/15/11.	
R307–406. Visibility				
R307–406	Visibility	9/15/1998	71 FR 7679, 2/14/06.	
R307–410. Permits: Emissions Impact Analysis				
R307–410–01	Purpose	6/6/2006	79 FR 7072, 2/6/14.	
R307–410–02	Definitions	6/6/2006	79 FR 7072, 2/6/14.	
R307–410–03	Use of Dispersion Models	6/6/2006	79 FR 7072, 2/6/14.	
R307–410–04	Modeling of Criteria Pollutant Impacts in Attainment Areas.	6/6/2006	79 FR 7072, 2/6/14.	
R307–410–06	Stack Heights and Dispersion Techniques	6/6/2006	79 FR 7072, 2/6/14.	
R307–413. Permits: Exemptions and Special Provisions				
[R307–7]	Exemption from Notice of Intent Requirements for Used Oil Fuel Burned for Energy Recovery.	11/15/1996	67 FR 35442, 5/20/02	Recodification not approved.

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
R307–413–7	Exemption from Notice of Intent Requirements for Used Oil Fuel Burned for Energy Recovery.	9/15/1998	71 FR 7679, 2/14/06.	
	R307–414. Permits: Fees for Approval Orders			
R307–414	Permits: Fees for Approval Orders	12/17/2000	72 FR 4641, 2/1/07.	

(d) *EPA-approved source-specific requirements.*

Rule title	State effective date	Final rule citation, date	Comments
Hill Air Force Base			
Ozone NAAQS Approval Orders:			
Air Quality Approval Order for Remodeling BX Service Station (7/12/1979).	3/4/1997	62 FR 38213, 7/17/1997.	
Approval Order for Hydrazine Exhaust Incinerator, Davis County (2/5/1985).	3/4/1997	62 FR 38213, 7/17/1997.	
Approval Order for Industrial Wastewater Treatment Facility, Davis County (2/20/1986).	3/4/1997	62 FR 38213, 7/17/1997.	
Approval Order for Paint Booth, HVAC Modification, Standby Generators, and Fuel Storage Tanks, Davis County (7/18/1983).	3/4/1997	62 FR 38213, 7/17/1997.	
BAQE–026–88, Approval Order for Paint Spray Booth in Building 1913 and Solvent Spray Booth in Building 1915, Davis County (1/20/1988).	3/4/1997	62 FR 38213, 7/17/1997.	
BAQE–039–91, Approval Order for Building 1701—Dip Tank, Bake Oven, Paint Booths, Davis County (2/7/1991).	3/4/1997	62 FR 38213, 7/17/1997.	
BAQE–353–88, Approval Order for Two Cold Solvent Cleaning Tanks in Building 2013, Weber County (7/21/1988).	3/4/1997	62 FR 38213, 7/17/1997.	
BAQE–525–88, Approval Order for Structural Repair and Maintenance Facility, Davis County (10/13/1988).	3/4/1997	62 FR 38213, 7/17/1997.	
BAQE–669–88, Approval Order for Paint Distillation Unit in Building 514, Davis County (12/20/1988).	3/4/1997	62 FR 38213, 7/17/1997.	
Construction Approval Order (6/27/1978)	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–0103–93, Modified Approval Order for Aircraft Purge System Near Building 287, Davis County (2/11/1993).	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–067–95, Modified Approval Order to DAQE–1006–94, Paint Booth Consolidation (1/31/1995).	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–068–95, Support Document for Approval Order DAQE–067–95 (1/30/1995).	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–0719–93, Approval Order for Air Permit for Emergency Power Generators, Davis County (8/20/1993).	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–0752–93, Modified Approval Order for: A. Replacement Boilers in Buildings 1624, 1904, 2104, 2203; B. Paint Spray Booth in Building 751; C. Carbon Brake Coating Process in Building 507; Davis County (8/27/1993).	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–1134–95, Approval Order for Setup Chemical Milling Process Line in Bldg 238, Davis County (12/7/1995).	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–1171–92, Approval Order for Emergency Generators and Media Blast Booth, Davis County (1/4/1993).	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–163–96, Approval Order for Medium Pressure Water & Chemical Paint Stripping of Aircraft, Davis County (2/9/1996).	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–167–92, Approval Order for JP–4 Tank Throughput Limitations (2/19/1992).	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–403–95, Approval Order for Construction of Two Boilers Each in Buildings 1590 and 1703, Davis County (5/8/1995).	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–416–92, Approval Order for Industrial Wastewater Treatment Plant Sludge Dryers, Building 577, Davis County (4/28/1992).	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–775–95, Approval Order to Modify AO for Engine Test Facilities, Davis County (8/30/1995).	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–824–94, Approval Order For Used Oil Burner/Boiler Permit Modification, Davis County (9/29/1994).	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–860–95, Your Letter of 6 September 1995, Phase II Vapor Recovery at Building 454 (9/20/1995).	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–894–91, Approval Order; Wording Change to Approval Order Dated June 22, 1988, Davis County (11/25/1991).	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–915–94, Change of Jet Fuel from JP–4 to JP–8 (10/18/1994)	3/4/1997	62 FR 38213, 7/17/1997.	

Rule title	State effective date	Final rule citation, date	Comments
Salt Lake County			
Ozone NAAQS Approval Orders:			
DAQE–0063–94, Pacificorp Gadsby Power Plant, Approval Order for SIP Change, Title V Major (2/3/1994).	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–300–95, Olympia Sales Company, Approval Order Revised to Meet the Ozone Maintenance Plan, Salt Lake County, Toxic Major Title V Major (4/13/1995).	3/4/1997	62 FR 38213, 7/17/1997.	
DAQE–433–94, Kennecott Utah Copper—Utah Power Plant, Approval Order for RACT Analysis, Salt Lake County, Title V Major (5/27/1994).	3/4/1997	62 FR 38213, 7/17/1997.	

(e) *EPA-approved nonregulatory provisions.*

Rule title	State effective date	Final rule citation, date	Comments
Section I. Legal Authority	11/12/1993	68 FR 37744, 6/25/2003	
Section II. Review of New and Modified Air Pollution Sources	11/12/1993	68 FR 37744, 6/25/2003	
Section III. Source Surveillance	1/1/2003	68 FR 37744, 6/25/2003	
IV. Ambient Air Monitoring Program			
Section IV.A. Introduction	11/12/1993	68 FR 37744, 6/25/2003	
Section IV.B. Air Quality Surveillance Network Design	11/12/1993	68 FR 37744, 6/25/2003	
Section IV.C. Network Description	11/12/1993	68 FR 37744, 6/25/2003	
Section IV.D. Data Reporting	11/12/1993	68 FR 37744, 6/25/2003	
Section IV.E. Episode Monitoring	11/12/1993	68 FR 37744, 6/25/2003	
Section IV.F. Annual Review	11/12/1993	68 FR 37744, 6/25/2003	
Section V. Resources	11/12/1993	68 FR 37744, 6/25/2003	
Section VI. Intergovernmental Cooperation	11/12/1993	68 FR 37744, 6/25/2003	
Section VII. Prevention of Air Pollution Emergency Episodes	1/1/2003	68 FR 37744, 6/25/2003	
Section VIII. Prevention of Significant Deterioration	6/16/2006	76 FR 41712, 7/15/2011	
IX. Control Measures for Area and Point Sources			
Section IX.A.1. Fine Particulate Matter (PM_{10}), Area Designation Background.	8/14/1991	59 FR 35036, 7/8/1994	
Section IX.A.2. Fine Particulate Matter (PM_{10}), PM_{10} Concentrations	8/14/1991	59 FR 35036, 7/8/1994	
Section IX.A.3. Fine Particulate Matter (PM_{10}), Utah County	9/5/2002	67 FR 78181, 12/23/2002.	
Section IX.A.4. Fine Particulate Matter (PM_{10}), Salt Lake County—Magna.	8/14/1991	59 FR 35036, 7/8/1994	
Section IX.A.5. Fine Particulate Matter (PM_{10}), Salt Lake Nonattainment Area.	8/14/1991	59 FR 35036, 7/8/1994	
Section IX.A.6. Fine Particulate Matter (PM_{10}), Control Strategies	9/5/2002	67 FR 78181, 12/23/2002.	
Section IX.A.7. Fine Particulate Matter (PM_{10}), Maintenance	9/5/2002	67 FR 78181, 12/23/2002.	
Section IX.A.8. Fine Particulate Matter (PM_{10}), Contingency Measures	9/5/2002	67 FR 78181, 12/23/2002.	
Section IX.A.9. Fine Particulate Matter (PM_{10}), Annual Average	9/5/2002	67 FR 78181, 12/23/2002.	
Section IX.A.10. Fine Particulate Matter (PM_{10}), Transportation Conformity.	9/5/2002	67 FR 78181, 12/23/2002.	
Section IX.A. Fine Particulate Matter (PM_{10}), Appendix A—Emission Limitations and Operating Practices (Davis and Salt Lake Counties).	9/5/2002	67 FR 78181, 12/23/2002.	
Section IX.B. Sulfur Dioxide	1/1/2003	68 FR 37744, 6/25/2003	
Section IX.C. Carbon Monoxide	2/25/2000	68 FR 37744, 6/25/2003	
Section IX.C.6. Carbon Monoxide, Provo	5/18/2004	70 FR 66264, 11/2/2005	
Section IX.C.7. Carbon Monoxide Maintenance Provision for Salt Lake City.	12/2/2004	70 FR 44055, 8/1/2005	
Section IX.C.8. Carbon Monoxide Maintenance Provisions for Ogden	1/4/2005	70 FR 54267, 9/14/2005	
Section IX.D. 8-Hour Ozone Maintenance Provisions for Salt Lake and Davis Counties.	1/3/2007	78 FR 59242, 9/26/2013	With exceptions identified in document.
Section IX.E. Nitrogen Dioxide	2/25/2000	68 FR 37744, 6/25/2003	
Section IX.F. Lead	2/25/2000	68 FR 37744, 6/25/2003	
Section IX.G. Fluoride	2/25/2000	68 FR 37744, 6/25/2003	
Section IX.H.1. Fine Particulate Matter (PM_{10}), Emission Limits and Operating Practices (Utah County).	9/5/2002	67 FR 78181, 12/23/2002.	

Rule title	State effective date	Final rule citation, date	Comments
X. Vehicle Inspection and Maintenance Program			
Section X.A. General Requirements and Applicability	12/5/2012	80 FR 54237, 9/9/2015 ..	
Section X.B. Davis County	2/14/1997	62 FR 38213, 7/17/1997	
Section X.C. Salt Lake County	10/7/2004	70 FR 44055, 8/1/2005 ..	
Section X.D. Utah County	5/18/2004	70 FR 66264, 11/2/2005	
Section X.E. Weber County	11/4/2004	70 FR 54267, 9/14/2005	
Section X.F. Cache County	11/6/2013	80 FR 54237, 9/9/2015 ..	
Section XI. Other Control Measures for Mobile Sources	11/12/1993	68 FR 37744, 6/25/2003	
Section XII. Transportation Conformity Consultation	5/2/2007	73 FR 51222, 9/2/2008 ..	
Section XIII. Analysis of Plan Impact	11/12/1993	68 FR 37744, 6/25/2003	
Section XIV. Emission Inventory Development	2/25/2000	68 FR 37744, 6/25/2003	
Section XV. Title 19, Chapter 2 Utah Code Annotated, 1993	11/12/1993	68 FR 37744, 6/25/2003	
Section XVI. Public Notification	11/12/1993	68 FR 37744, 6/25/2003	
XVII. Visibility Protection			
Section XVII.A. Introduction	2/25/2000	68 FR 37744, 6/25/2003	
Section XVII.B. Background	4/12/1993	68 FR 37744, 6/25/2003	
Section XVII.C. Visibility Protection	4/12/1993	68 FR 37744, 6/25/2003	
Section XVII.D. Visibility Monitoring	2/25/2000	68 FR 37744, 6/25/2003	
Section XVII.E. New or Modified Source Analysis of Visibility Impact	2/25/2000	68 FR 37744, 6/25/2003	
Section XVII.F. Existing Source Visibility Impact and BART	4/12/1993	68 FR 37744, 6/25/2003	
Section XVII.G. Regional Haze	4/12/1993	68 FR 37744, 6/25/2003	
Section XVII.H. Long Term Plan to Show Progress Toward Improved Visibility.	4/12/1993	68 FR 37744, 6/25/2003	
Section XVII.I. Visibility Progress Report	4/12/1993	68 FR 37744, 6/25/2003	
Section XVII.J. Policy of the Air Conservation Committee Concerning the Protection of Scenic Views Associated with Mandatory Class I Areas from Signficant Impairment for Visibility.	4/12/1993	68 FR 37744, 6/25/2003	
Section XVIII. Demonstration of GEP Stack Height	2/25/2000	68 FR 37744, 6/25/2003	
Section XIX. Small Business Assistance Program	11/12/1993	68 FR 37744, 6/25/2003	
Section XX.G. Long-Term Strategy for Fire Programs	4/7/2011	78 FR 4071, 1/18/2013 ..	
Section XXII. General Conformity	1/1/2003	68 FR 37744, 6/25/2003	
Section XXIII. Interstate Transport	2/9/2007	73 FR 16543, 3/28/2008	
Maintenance Plans			
Ogden Carbon Monoxide (CO) Maintenance Plan Summary.			
Salt Lake and Davis County Ozone Maintenance Plan Summary.			
Salt Lake and Tooele Counties Sulfur Dioxide (SO_2) Plan Summary.			
Salt Lake City Carbon Monoxide (CO) Maintenance Plan.			
Salt Lake County Particulate Matter (PM_{-10}) Attainment Plan Summary.			
Utah County Particulate Matter (PM_{-10}) Attainment Plan Summary.			

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2015–0838; FRL–9947–76–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia Infrastructure Requirements for the 2012 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia (Virginia) pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan to address basic program elements, including but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure implementation, maintenance, and enforcement of the NAAQS. These elements are referred to as infrastructure requirements. The Commonwealth of Virginia made a submittal addressing the infrastructure requirements for the 2012 fine particulate matter ($PM_{2.5}$) NAAQS.

DATES: This final rule is effective on July 18, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2015–0838. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov* or may be viewed during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the state submittal are available at Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 18, 1997, the EPA promulgated a new 24-hour and a new annual NAAQS for $PM_{2.5}$ (62 FR 38652). Subsequently, on December 14, 2012, the EPA revised the level of the health based (primary) annual $PM_{2.5}$ standard to 12 micrograms per cubic meter (µg/m³). *See* 78 FR 3086 (January 15, 2013).[1]

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affect the content of the submission. The content of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

II. Summary of SIP Revision

On July 16, 2015, the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VADEQ), submitted a SIP revision that addresses the infrastructure elements specified in section 110(a)(2) of the CAA necessary to implement, maintain, and enforce the 2012 $PM_{2.5}$ NAAQS.[2] On March 7, 2016 (81 FR 11711), EPA published a notice of proposed rulemaking (NPR) proposing approval of the Virginia July 16, 2015 submittal. In the NPR, EPA proposed approval of the following infrastructure elements: Section 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

At this time, EPA is not taking action on section 110(a)(2)(D)(i)(I) of the CAA relating to interstate transport of emissions because Virginia's July 16, 2016 infrastructure SIP submittal did not include provisions for this element; therefore EPA will take later, separate action on section 110(a)(2)(D)(i)(I) for the 2012 $PM_{2.5}$ NAAQS for Virginia as explained in the NPR. Additionally, EPA is not at this time taking action on section 110(a)(2)(D)(i)(II) for visibility protection for the 2012 $PM_{2.5}$ NAAQS as explained in the NPR. Although Virginia's infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS referred to Virginia's regional haze SIP for section 110(a)(2)(D)(i)(II) for visibility protection, EPA intends to take later, separate action on Virginia's submittal for these elements as explained in the NPR and the Technical Support Document (TSD) which accompanied the NPR. Finally, Virginia did not submit section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) and will be addressed in a separate process if necessary.

The rationale supporting EPA's proposed rulemaking action, including the scope of infrastructure SIPs in general, is explained in the published NPR and the TSD accompanying the NPR and will not be restated here. The NPR and TSD are available in the docket for this rulemaking at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2015–0838. No public comments were received on the NPR.

III. Final Action

EPA is approving, as a revision to the Virginia SIP, the following elements of Virginia's July 16, 2015 SIP revision for the 2012 $PM_{2.5}$ NAAQS: Section 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). Virginia's SIP revision provides the basic program elements specified in section 110(a)(2) necessary to implement, maintain, and enforce the 2012 $PM_{2.5}$ NAAQS. This final rulemaking action does not include action on sections 110(a)(2)(D)(i)(I) (interstate transport of emissions), and (D)(i)(II) (visibility protection) for the 2012 $PM_{2.5}$ NAAQS as previously discussed. Additionally, EPA is not taking action on section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D, title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) of the CAA, and will be addressed in a separate process if necessary.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by federal law to maintain program delegation, authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . ." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval."

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[1] In EPA's 2012 $PM_{2.5}$ NAAQS revision, EPA left unchanged the existing welfare (secondary) standards for $PM_{2.5}$ to address PM related effects such as visibility impairment, ecological effects, damage to materials and climate impacts. This includes an annual secondary standard of 15 µg/m³ and a 24-hour standard of 35 µg/m³.

[2] To clarify, the "2013 $PM_{2.5}$ NAAQS" referred to in the Virginia SIP submittal is the same as the "2012 $PM_{2.5}$ NAAQS" EPA refers to in this rulemaking action. The final rule for this NAAQS was signed by the EPA Administrator on December 14, 2012, thereby it has been called the "2012 $PM_{2.5}$ NAAQS." However, the final rule was published in the **Federal Register** on January 15, 2013, with an effective date of March 13, 2013, resulting in it also being referred to as the "2013 $PM_{2.5}$ NAAQS."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 15, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, which satisfies certain infrastructure requirements of section 110(a)(2) of the CAA for the 2012 $PM_{2.5}$ NAAQS for the Commonwealth of Virginia, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 27, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (e) is amended by adding, to the end of the table, an entry for "Section 110(a)(2) Infrastructure Requirements for the 2012 Particulate Matter NAAQS." The added text reads as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2012 Particulate Matter NAAQS.	Statewide	7/16/15	6/16/16, [Insert **Federal Register** citation].	Docket #2015–0838. This action addresses the following CAA elements, or portions thereof: 110(a)(2)(A), (B), (C), (D)(i)(II)(PSD), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2016–14181 Filed 6–15–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0124; FRL–9946–38–Region 9]

Approval of California Air Plan Revisions, Eastern Kern Air Pollution Control District and Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Yolo-Solano Air Quality Management District (YSAQMD) and Eastern Kern Air Pollution Control District (EKAPCD) portions of the California State Implementation Plan (SIP). These revisions concern, respectively, the definition of volatile organic compounds (VOCs), and emissions of VOCs from the surface coating operations of wood products. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on August 15, 2016 without further notice, unless the EPA receives adverse comments by July 18, 2016. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2016–0124 at *http://www.regulations.gov,* or via email to *Steckel.Andrew@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Arnold Lazarus, EPA Region IX, (415) 972–3024, *lazarus.arnold@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to the EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this action with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted/amended/revised	Submitted
EKAPCD	410.9	Wood Products Surface Coating Operations	3/13/2014	7/25/2014
YSAQMD	1.1	General Provisions and Definitions	7/08/2015	11/13/2015

On September 11, 2014, and January 19, 2016, the EPA determined that the submittals for EKAPCD Rule 410.9 and YSAQMD Rule 1.1 respectively met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There are no previous versions of Rule 410.9 in the SIP. We approved an earlier version of Rule 1.1 into the SIP on April 28, 2015 (80 FR 23449).

C. What is the purpose of the submitted rule and rule revision?

VOCs help produce ground-level ozone, smog and PM, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control

VOC emissions. Rule 410.9 limits and controls VOC emission from surface coating operations of wood products. The revisions to Rule 1.1 do not have a direct effect on air pollution emissions; they amend the definition of VOC that is used in other YSAQMD rules to exempt certain substances that have been determined to have negligible photochemical reactivity and which are excluded from the definition applied by the EPA. The EPA's technical support documents (TSDs) have more information about these rules.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs in ozone nonattainment areas classified as moderate or above (see CAA sections 182(b)(2)). The EKAPCD and the YSAQMD regulate ozone areas classified as Marginal Nonattainment and Severe Nonattainment respectively for the federal 8-hour 2008 Ozone Standard. 40 CFR 81.305. The TSDs have more information about these requirements as they relate to the submitted rules.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," (57 FR 13498, April 16, 1992 and 57 FR 18070, April 28, 1992).
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations" ("the Bluebook," U.S. EPA, May 25, 1988; revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies" ("the Little Bluebook", EPA Region 9, August 21, 2001).
4. Control Techniques Guidelines, "Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations" (EPA–453/R–96–007, April 1996).
5. Control Techniques Guidelines, "Control Techniques Guidelines for Flat Wood Paneling Coatings" (EPA–453/R–06–004, September 2006).
6. Code of Federal Regulations, Title 40, Chapter C, Part 51, Subpart F, Section 51.100, "Definitions" (40 CFR 51.100).

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, stringency and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that we recommend for the next time the local agency modifies the rules but which are not currently the basis for rule disapproval.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, the EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this issue of the **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by July 18, 2016, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 15, 2016. This will incorporate these rules into the federally enforceable SIP.

Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the EKAPCD and YSAQMD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available electronically through *www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 15, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 3, 2016.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(442)(i)(F)(*3*), (c)(447)(i)(D)(*4*), and (c)(472) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(442) * * *

(i) * * *

(F) * * *

(*3*) Previously approved on April 28, 2015 in paragraph (442)(i)(F)(*1*) of this section and now deleted with replacement in (472)(i)(A)(*1*), Rule 1.1, "General Provisions and Definitions," revised on May 8, 2013.

* * * * *

(447) * * *

(i) * * *

(D) * * *

(*4*) Rule 410.9, "Wood Products Surface Coating Operations," adopted on March 13, 2014.

* * * * *

(472) New and amended regulations were submitted on November 13, 2015, by the Governor's designee.

(i) Incorporation by reference.

(A) Yolo-Solano Air Quality Management District.

(*1*) Rule 1.1, General Provisions and Definitions, revised July 8, 2015.

[FR Doc. 2016–14098 Filed 6–15–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–XD344

Pacific Bluefin Tuna in the Eastern Pacific Ocean; Response to Petition for Rulemaking

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of decision on petition.

SUMMARY: NMFS announces its decision on a petition for rulemaking submitted by the Center for Biological Diversity (CBD). In their petition, CBD requested that NMFS implement additional domestic regulations to address the relative impacts of the U.S. fleet on the Pacific bluefin tuna (PBF) stock, which is overfished and subject to overfishing. Outside of the scope of their petition for rulemaking, CBD also requested that NMFS develop recommendations for international fishery management organizations to take actions to end overfishing of PBF. In light of public comments, NMFS is responding to each element of the petition but referring the specific requests for rulemaking under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to the Pacific Fishery Management Council (Pacific Council) for further consideration. The decision was made on June 9, 2016.

DATES: June 16, 2016.

FOR FURTHER INFORMATION CONTACT: Heidi Taylor, NMFS, 562–980–4039.

SUPPLEMENTARY INFORMATION: NMFS received a letter from CBD, an environmental non-governmental organization, on April 9, 2014. In the letter, CBD asserted that PBF (*Thunnus orientalis*) are not adequately protected under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) and that the Pacific Council failed to meet its statutory duty to develop recommendations for domestic regulations in response to NMFS' determination that the PBF stock is overfished and subject to overfishing (78 FR 41033, July 9, 2013). Specifically, CBD petitioned NMFS to amend the HMS FMP or initiate a rulemaking under the authority of the MSA, 16 U.S.C. 1801 *et seq.*, to include PBF as a prohibited species until the stock is rebuilt, thereby placing a moratorium on retention of PBF by U.S. fishing vessels. As an alternative, CBD proposed that NMFS establish annual catch limits and a permanent minimum size requirement to protect PBF of age classes 1 and 2 and that NMFS amend the HMS FMP to establish specific reference points for PBF to guide science-based management of the stock. Outside of the scope of the petition for rulemaking, CBD requested that NMFS develop recommendations to the Secretary of State and Congress to end PBF overfishing at the international level.

Public Input on the Petition

NMFS published a **Federal Register** document on July 24, 2014 (79 FR

43017), to solicit public comments and information on both the petition for rulemaking and the non-rulemaking requests contained in CBD's letter. NMFS specifically requested that the public provide comments on the social, economic, and biological impacts from implementing any of the petitioner's requests to assist NMFS in its evaluation and in determining what rulemaking action(s), if any, were appropriate.

NMFS received 29 written comments, 2 emails, and 431 individually submitted electronic comments via the Federal e-Rulemaking Portal. CBD submitted several electronic comments with 23,826 identical form letters attached. The majority of distinct comments came from the recreational fishing community, especially sportfishing anglers, while some came from the commercial passenger fishing vessel (CPFV) industry. Of the individually submitted comments, 323 included rationales for opposing a prohibition on fishing for PBF. Additionally, 253 of the individually submitted comments included suggestions for alternative management measures. A small minority of the public comments received expressed their support for banning fishing for PBF in both U.S. waters and the high seas. NMFS considered each of the comments in the analysis of CBD's petition.

Analysis of Petition and Decision

Following NMFS' determination that the petition for rulemaking in CBD's letter contained enough information to enable NMFS to effectively consider the substance of the petition (79 FR 43017, July 24, 2014), NMFS evaluated the petitioner's requests with regard to achieving the management and conservation objectives of ending overfishing and rebuilding the PBF stock. PBF is a trans-Pacific stock that is harvested by fishing vessels of many different nations. PBF catch by U.S. West Coast fisheries has constituted approximately 2 percent of the Pacific-wide catch in recent years (2008–2014) (ISC, 2015).When NMFS received the petition from CBD, it had already notified (in a letter dated April 8, 2013) the Pacific Council of its duties under section 304(i) of the MSA, 16 U.S.C. 1854(i), received a response from the Pacific Council (dated April 1, 2014), and engaged with the Council in developing both international and domestic measures to reduce fishing mortality and aid in rebuilding the PBF stock. These measures are described in NMFS' response to the petition, which is summarized below. At this time, NMFS views the Pacific Council's recommendations and adopted measures as sufficient to fulfill international and domestic obligations to conserve the PBF stock and address the relative impact of U.S. vessels. However, given the role of the Pacific Council in MSA rulemakings and amendments to the HMS FMP, NMFS refers the specific requests related to domestic fisheries management (*i.e.*, requests 1 and 2 below), as well as NMFS input on these matters, to the Pacific Council for further consideration. A more detailed response to the petition, as well as access to public comments, is available via the Federal eRulemaking Portal: *http://www.regulations.gov,* identified by "NOAA–NMFS–2014–0076."

Petition Request 1: CBD requested that NMFS add PBF to the list of prohibited species in the HMS FMP due to the depleted status of the stock. CBD contended that doing so would be symbolically powerful and would have little to no economic impact on U.S. fishermen.

Response to Request 1: There is little evidence to suggest that a unilateral prohibition on the retention of PBF by U.S. West Coast fishermen will either end overfishing or have a consequential impact on reducing overfishing because catch of PBF by U.S. West Coast-based fleets represents a small portion of the total Pacific-wide catch. However, it is clear to NMFS that such a prohibition would economically harm both U.S. West Coast commercial and recreational fisheries and fishing communities. PBF is a marketable species and is economically important to U.S. West Coast fishermen who target highly migratory species. The commercial coastal purse seine fleet opportunistically targets PBF when they are in the U.S. exclusive economic zone (EEZ). While the primary targets for this fleet are small coastal pelagic species, such as Pacific sardine, Pacific mackerel, and market squid, PBF is part of their historical and current fishing portfolio. PBF are also incidentally caught in the commercial large-mesh drift gillnet (DGN) fishery, the albacore surface hook-and-line fishery, and the deep-set longline fishery. For the directed fishing fleet (purse seiners), revenue from PBF alone constitutes about 2 to 4 percent of the total revenue from fishing. For the DGN fleet, the annual average PBF revenue share is about 3 percent. Despite the fact that U.S. West Coast-based sport fishermen are not permitted to sell their catch, other positive regional economic impacts generated by recreational fishing activities, including personal enjoyment of and willingness to pay for recreational fishing, could be negatively impacted by prohibiting all retention of PBF by U.S. vessels.

As part of their biennial management process, the Pacific Council considered impacts to recreational fisheries when adopting measures under MSA section 304(i) to address the relative impact of U.S. fisheries on the PBF stock. During deliberations, the Pacific Council considered how allowing anglers to catch and retain PBF might affect decisions to take recreational fishing trips. Specifically, the Pacific Council considered an analysis of the potential impacts of recreational bag and possession limit reductions. This analysis was based on CPFV logbook data from the 2008 to 2013 fishing seasons and included estimates for economic and employment losses due to a moratorium on U.S. West Coast-based PBF retention (*e.g.*, reducing the current PBF bag limit from 10 to 0 fish). The analysis has become part of a Southwest Fisheries Science Center Working Paper, which includes estimated losses of up to $13.8 million in annual trip expenditures and $25.8 million in annual gross sales for southern California due to a decrease in the number of CPFV trips that target PBF (5,275 angler days in U.S. waters and 56,338 angler days in Mexico waters). Additionally, the 0-bag limit scenario was estimated to generate a potential employment loss in the southern California economy of up to 178 full-time equivalent jobs (Stohs, 2016).

NMFS regards the United States' continued participation in the international decision-making processes of the two regional fishery management organizations (RFMOs)—the Inter-American Tropical Tuna Commission (IATTC) and the Western and Central Pacific Fisheries Commission (WCPFC)—as critical to effectively ending overfishing of PBF and rebuilding the Pacific-wide stock. Other nations have not indicated they would follow suit if the United States were to unilaterally impose a moratorium on PBF retention. NMFS will continue to work with the U.S. Delegations to the two RFMOs to garner consensus from other PBF fishing nations to achieve far greater reductions in total fishing mortality than the reductions that could be achieved by prohibiting retention for the relatively small-scale U.S. fisheries alone. Further, NMFS will continue to work with the Pacific Council to adopt and implement, if necessary, additional management measures to address the relative impacts of the U.S. fleet.

Petition Alternative Request 1: As an alternative to a prohibition on the retention of PBF, CBD requested that

NMFS establish annual catch limits (ACLs) and a permanent minimum size limit for protecting age class 1 and 2 PBF. CBD requested implementation of ACLs, if not a total prohibition on retention, which it asserts is a necessary step towards achieving the conservation objective of ending overfishing and rebuilding the PBF stock.

Response to Alternative Request 1: NMFS does not agree with CBD's assertion that applying ACL requirements to the U.S. portion of the PBF catch limit would lead to ending overfishing. NMFS has already imposed PBF catch limits for U.S. commercial fisheries in the eastern Pacific Ocean (EPO) under the Tuna Conventions Act. Imposing additional catch limits under the authority of MSA would inflict additional costs on U.S. industry for little conservation gain. Further, the Pacific Council did not adopt ACLs for PBF because it is a transboundary stock under international management, and as such is exempt from ACL requirements (see paragraph (h)(2)(ii) of the National Standard 1 guidelines at 50 CFR 600.310).

NMFS considers CBD's request for a recreational size limit to mean that any PBF of age class 1 or 2 caught by U.S. anglers would have to be released. Unlike catch or retention limits, a size limit regulation is less likely to prohibit or deter targeting of PBF. Maunder and Aires-da-Silva (2014) argue that unless a fishery can completely control its selectivity, or unless released fish have a high survival rate, it is very difficult to implement and evaluate the effects of a minimum size limit. Given the current gear used and the nature of fishing for PBF in the EPO, NMFS is not convinced, at this time, that size limits would be an effective management tool for recreational fisheries that catch PBF in the EPO, or that they would be accepted by the IATTC and other PBF fishing nations.

Lastly, NMFS shares CBD's interest in ending overfishing and is pleased to report progress on the adoption and implementation of meaningful measures to both aid in the rebuilding of the PBF stock and to address the relative impacts of the U.S. fleet. In October 2014, the IATTC adopted Resolution C–14–06 (*Measures for the Conservation and Management of Pacific Bluefin Tuna in the Eastern Pacific Ocean, 2015–2016*), which included a 40 percent reduction in the commercial catch limits for 2015 and 2016 compared to the 2014 level. NMFS published a rule to implement these catch limits for the U.S. commercial sector on July 8, 2015 (80 FR 38986). On July 28, 2015, NMFS implemented a reduction in the daily PBF bag limit from 10 to 2 PBF and a reduction in the maximum multi-day possession limit from 30 to 6 PBF for U.S. West Coast recreational fisheries (80 FR 38986), based on the Pacific Council's recommendation. NMFS estimates that this action will result in an approximately 30 percent reduction in U.S. recreational catch. These reductions in commercial and recreational catch of PBF are consistent with IATTC scientific staff advice.

Petition Request 2: CBD requested that NMFS amend the HMS FMP to establish specific values for reference points, such as maximum fishing mortality threshold (MFMT) and the minimum stock size threshold (MSST), for PBF. CBD asserted that specific values are essential to science-based management, and that "[t]he lack of specific values for PBF reference points has already crippled scientists' ability to provide conservation advice."

Response to Request 2: NMFS agrees with CBD that reference points assist in science-based management. Given the availability of subsequent years of PBF stock assessments, continued work to evaluate reference points, and the Pacific Council's upcoming biennial management cycle, NMFS encourages the Council to consider the adequacy of the FMP reference points and/or proxies for the PBF stock. As described in paragraph (b)(2)(iv) of the National Standard 1 guidelines, reference points include status determination criteria (SDC) such as MFMT and MSST or their proxies, maximum sustainable yield (MSY), acceptable biological catch (ABC), and ACL. As discussed earlier, because PBF is an internationally assessed and managed stock and meets the international exemption criteria of the National Standard 1 guidelines, an ABC and ACL was not included in the HMS FMP. However, the HMS FMP includes SDC and an estimate for MSY based on a mean of stock-wide catches from 1995 to 1999. The reference points of the HMS FMP are considered guideposts for managing the PBF stock and require being able to determine and monitor the effects of fishing. Nonetheless, the effects of fishing are often difficult to determine for HMS species like PBF. For example, trends in catch and effort may reflect more than abundance (*e.g.,* fishing success may be affected by schooling behavior and/or environmental effects on the availability of species). Though SDC are included in the HMS FMP, specific values for MFMT and MSST have not been identified for PBF. Rather, NMFS uses these guideposts in concert with other available biological reference points to evaluate the status of the PBF stock.

NMFS determined stock status conditions of PBF based on the stock assessments of the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific (ISC) (*e.g.,* 78 FR 41033, July 9, 2013; 80 FR 12621, March 10, 2015), the primary scientific body that routinely conducts stock assessments on temperate tuna and tuna-like species for the North Pacific. Its PBF Working Group (PBFWG) is responsible for conducting PBF stock assessments; it annually reports on stock status and provides conservation advice. Despite the fact that reference points have not yet been adopted by the IATTC or the WCPFC, the PBFWG routinely reports stock size and fishing mortality relative to a range of biological reference points (*e.g.,* ISC, 2014). NMFS considers these PBF assessments to be the best scientific information available for determining PBF stock status under the MSA and for notifying the respective Councils of their responsibilities under MSA section 304(i). NMFS works with the Pacific Council to ensure that results of international assessments and status updates for management unit stocks of the HMS FMP, including PBF, are routinely made available to the public in the Stock Assessment and Fishery Evaluation reports.

Ideally, there would be continuity in reference points used for international and domestic management of fishing on the PBF stock. However, the Pacific Council and NMFS are not required to adopt reference points that are identical to the reference points adopted by the IATTC or WCPFC. Further, the lack of internationally agreed upon reference points for PBF should not preclude the Pacific Council from developing or refining reference points and/or proxies in accordance with National Standard 1.

Request 3 (not part of the petition for rulemaking): Aside from the petition for rulemaking discussed above, CBD also cited section 304(i) of the MSA and requested that NMFS develop and submit recommendations to the Secretary of State and Congress for international actions that will end overfishing in the fishery and rebuild the PBF stock. Specifically, CBD provided the following recommendations: (1) Establish a high seas moratorium on all fishing, (2) implement a Pacific-wide minimum size for PBF catch; and (3) achieve a steep reduction in PBF quota for all countries to meet rebuilding targets that are based on established reference points. NMFS addresses each of these topics below.

Response to Request 3: This request was not a part of CBD's petition for rulemaking under the MSA, and therefore is not being referred to the Pacific Council for further consideration. Nonetheless, NMFS found merit in certain aspects of CBD's request for additional international recommendations. NMFS' response to these additional requests is included below.

First, section 304(i)(2)(B) of the MSA, cited by CBD, requires the appropriate fishery management councils, and not NMFS,[1] to develop recommendations to the Secretary of State and Congress to end overfishing and rebuild overfished stocks. As stated earlier, the Pacific Council had already provided their recommendations for international actions to NMFS on April 1, 2014, thereby addressing their obligations under section 304(i)(2)(B) of the MSA. NMFS acted on the Council's recommendations when providing support to the U.S. Delegations for both the IATTC and WCPFC.

As for CBD's requests for NMFS to make specific recommendations to Congress and the State Department, NMFS is not convinced at this time that either closing the high seas to fishing or establishing size limits for PBF would be effective management tools for rebuilding the PBF stock or serving national interests. The conservation benefits of closing the high seas to fishing, at least in terms of changes in total catch, will likely be determined by the degree of movement of targeted species, as well as the mobility of vessels and opportunities to exploit the stock in alternative areas (Davies *et al.*, 2012). Furthermore, most of the commercial catches of PBF in the EPO are taken by purse seiners and nearly all of those catches have not been made on the high seas; instead, most have occurred west of Baja California and California, within about 100 nautical miles of the coast, between about 23° N. and 35° N. (IATTC, 2014). Similarly, most of the recreational PBF catch occurs in the EEZs of Mexico and the United States. In the western Pacific Ocean, PBF is primarily caught from Taiwan to Hokkaido, with troll, purse seine, trap, drift net, and other gear in coastal or nearshore areas. Pacific-wide catches of PBF on the high seas are primarily taken by the longline fleets of Japan, Korea, and Chinese Taipei. However, these fleets catch small amounts of PBF on the high seas in comparison to catches from other fishing grounds (Bayliff, 2000; ISC, 2015).

Lastly, NMFS remains committed to working with the U.S. Delegations to the IATTC and WCPFC to promote Pacific-wide conservation and management measures, a rebuilding plan, and a long-term management framework with appropriate and compatible reference points. As previously mentioned, both RFMOs adopted (and NMFS implemented) more restrictive measures for 2015 and 2016 than in previous resolutions. The ISC evaluated these measures in the context of future stock assessments, spawning stock biomass projections, and progress towards the provisional multi-annual rebuilding plan for PBF adopted by the WCPFC. The United States submitted a proposal to the 89th Meeting of the IATTC to aid in establishing a rebuilding plan for PBF that includes a paragraph about establishing reference points and harvest control rules for the long term management of PBF. The United States also submitted a proposal for a rebuilding plan and a proposal for a precautionary management framework for PBF to the 11th Meeting of the Northern Committee, which is a subsidiary body of the WCPFC that develops recommendations for PBF management measures. These proposals can be found here: *https://www.wcpfc.int/system/files/NC11-DP-03%20%28PBF%20rebuilding%20plan%29.pdf* (IATTC proposal) and *https://www.wcpfc.int/meetings/11th-regular-session-northern-committee* (Northern Committee proposals). While neither proposal was adopted, the United States plans to submit proposals intended to contribute to the rebuilding of the stock at the upcoming IATTC and Northern Committee meetings in 2016.

References

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Davies, T.K., S. Martin, C. Mees, E. Chassot and D.M. Kaplan. 2012. A review of the conservation benefits of marine protected areas for pelagic species associated with fisheries. ISSF Technical Report 2012–02. International Seafood Sustainability Foundation, McLean, Virginia, USA. 36 pp.

Inter-American Tropical Tuna Commission (IATTC). 2014. Pacific Bluefin Tuna. IN: Fishery Status Report No. 12: Tuna and Billfishes in the Eastern Pacific Ocean, pp. 101–107. Inter-American Tropical Tuna Commission, La Jolla, California 2014.

International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean (ISC). 2014. Stock Assessment for Pacific Bluefin Tuna in the Pacific Ocean in 2014. Report of the Pacific Bluefin Tuna Working Group, International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean.

ISC. 2015. Report of the Fifteenth Meeting of the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean. Plenary Session. July 15–20, 2015; Kona, Hawaii.

Maunder, M. and A. Aires-da-Silva. 2014. Developing Conservation Measure for Bluefin Tuna in the Eastern and Western Regions of the Pacific Ocean: Factors to Consider and Fishery Impact Analysis. Document IATTC -87 Inf-B, IATTC, LA Jolla, CA. 20 pp.

Stohs, S. 2016. Regulatory Impacts of Recreational Fishery Management Alternatives for North Pacific Bluefin Tuna. Working Paper; NMFS Southwest Fisheries Science Center, La Jolla, CA.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 10, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–14239 Filed 6–13–16; 4:15 pm]

BILLING CODE 3510–22–P

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[1] Except for Atlantic highly migratory species, which are managed directly by NMFS.

Proposed Rules

Federal Register
Vol. 81, No. 116
Thursday, June 16, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–7002; Airspace Docket No. 16–ACE–5]

Proposed Establishment of Class E Airspace; Jetmore, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Jetmore, KS. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures developed at Jetmore Municipal Airport, for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before August 1, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2016–7002; Docket No.16–ACE–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817–222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace at Jetmore Municipal Airport, Jetmore, KS.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2016–7002/Airspace Docket No. 16–ACE–5." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Central Service Center, Operation Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6-mile radius of Jetmore Municipal Airport, Jetmore, KS, to accommodate new standard instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace designations are published in Section 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Section 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE KS E5 Jetmore, KS [New]

Jetmore Municipal Airport, TX
(Lat. 37°59′04″ N., long. 099°53′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Jetmore Municipal Airport.

Issued in Fort Worth, TX, on June 7, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–14106 Filed 6–15–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 888, 982, 983, and 985

[Docket No. FR–5855–P–02]

RIN 2501–AD74

Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes the use of Small Area Fair Market Rents (Small Area FMRs) in the administration of the Housing Choice Voucher (HCV) program for certain metropolitan areas. HUD is proposing to use Small Area FMRs in place of the current 50th percentile rent to address high levels of voucher concentration. HUD believes that Small Area FMRs gives HCV tenants a more effective means to move into areas of higher opportunity and lower poverty areas by providing them with subsidy adequate to make such areas accessible and to thereby reduce the number of voucher families that reside in areas of high poverty concentration.

HUD proposes to use several criteria for determining which metropolitan areas would best be served by application of Small Area FMRs in the administration of the HCV program. These criteria include a threshold number of vouchers within a metropolitan area, the concentration of current HCV tenants in low-income areas, and the percentage of renter occupied units within the metropolitan area with gross rents above the payment standard basic range. Public housing agencies (PHAs) operating in designated metropolitan areas would be required to use Small Area FMRs. PHAs not operating in the designated areas would have the option to use Small Area FMRs in administering their HCV programs. Other programs that use FMRs would continue to use area-wide FMRs. HUD's goal in pursuing this rulemaking is to provide HCV tenants with a greater ability to move into areas where jobs, transportation, and educational opportunities exist.

DATES: *Comment Due Date:* August 15, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://ww.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information about this rule, contact Peter B. Kahn, Director, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402–2409; email: *SAFMR_Rule@hud.gov.* The listed telephone number is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling Federal Relay Service at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of This Proposed Rule

The purpose of this proposed rule is to establish a more effective means for HCV tenants to move into areas of higher opportunity and lower poverty by providing the tenants with a subsidy adequate to make such areas accessible and, consequently, help reduce the number of voucher families that reside in areas of high poverty concentration. Subsidy for HUD's HCV program is currently determined by a formula that considers rent prices across an entire metropolitan area. However, rents can vary widely within a metropolitan area depending upon the size of the metropolitan area and the neighborhood in the metropolitan area within which one resides. The result of determining rents on the basis of an entire metropolitan area is that a voucher subsidy may be too high or may be too low to cover market rent in a given neighborhood. HUD's current policy for addressing high concentrations of voucher holders raises the level of the FMR from the 40th percentile to the 50th percentile (roughly a 7–8 percent increase) in the whole FMR area. This level of added subsidy is not targeted to areas of opportunity; consequently, this formula has not proven effective in addressing the problem of concentrated poverty and economic and racial segregation in neighborhoods. Experience with the 50th percentile regime shows that the majority of HCV tenants use their vouchers in neighborhoods where rents are low but poverty is generally high. Small Area FMRs will complement HUD's other efforts (such as mobility counseling) to support households in making informed choices about units and neighborhoods with the goal of increasing the share of households that choose to use their vouchers in low poverty opportunity areas.

Rather than determine rents on the basis of an entire metropolitan area, this rule proposes to determine rents on the basis of ZIP codes. ZIP codes are small enough to reflect neighborhood differences and provide an easier method of comparing rents within one ZIP code to another ZIP code area within a metropolitan area. Based on early evidence from PHAs using Small Area FMRs that are in place in certain metropolitan areas in the U.S., HUD believes that Small Area FMRs are more effective in helping families move to areas of higher opportunity and lower poverty.

B. Summary of Major Provisions of This Proposed Rule

The major provisions of this proposed rule are as follows:

The existing regulations at 24 CFR 888.113 would be amended to no longer provide for FMRs to be set at the 50th percentile rent. However, the regulations do not revoke any FMR currently set at the 50th percentile rent, and for which the current 3-year term for retaining a 50th percentile rent has not expired.

The proposed regulations provide for metropolitan areas with FMRs set at the 50th percentile rent to transition to either (1) the 40th percentile rent at the expiration of the 3-year period for the 50th percentile rent, or (2) designation as a Small Area FMR area in accordance with the proposed criteria for determining a Small Area FMR area.

The proposed regulations, in 24 CFR 888.113(d)(2), define Small Area FMR areas as the U.S. Postal Service ZIP code areas within a designated metropolitan area.

The proposed regulations would provide that a PHA with jurisdiction in a 50th percentile FMR area that reverts to the standard 40th percentile FMR may request HUD approval of payment standard amounts based on the 50th percentile rent in accordance with the regulations in 24 CFR 982.503(f), which are not proposed to be changed by this rule. PHAs would be required to continue to meet the provisions of 24 CFR 982.503(f) annually in order to maintain payment standards based on 50th percentile rents.

The proposed regulations provide, in 24 CFR 888.113(c), the criteria for those areas for which Small Area FMRs will be set. This section provides that Small Area FMRs will be set for metropolitan areas where at least 2,500 HCVs are under lease; at least 20 percent of the standard quality rental stock, within the metropolitan area, is in small areas (that is ZIP codes) where the Small Area FMR is more than 110 percent of the metropolitan FMR; and the measure of the percentage of voucher holders living in concentrated low-income areas relative to all renters within these areas over the entire metropolitan area exceeds 155 percent (or 1.55).

The proposed regulations provide, in 24 CFR 888.113(c)(2), that "concentrated low-income areas" means those census tracts in the metropolitan FMR area with a poverty rate of 25 percent or more; or any tract in the metropolitan FMR area where more than 50 percent of the households earn incomes at less than 60 percent of the area median income (AMI) and are designated as Qualified Census Tracts in accordance with section 42 of the Internal Revenue Code (26 U.S.C. 42).

For all determinations of FMRs, 40th percentile or Small Area FMRs, HUD replaces "the most recent decennial census" with the "most recent American Community Survey conducted by the U.S. Census Bureau."

The proposed regulations provide, in 24 CFR 888.113(c)(3), that if a metropolitan area meets the criteria for application of Small Area FMRs to the area, all PHAs administering HCV programs in that area will be required to use Small Area FMRs.

The proposed regulations, in 24 CFR 888.113(c)(3), also provide that a PHA that is not administering an HCV program in a metropolitan area subject to application of Small Area FMRs may opt to use Small Area FMRs by seeking approval of HUD's Office of Public and Indian Housing through written request to such office.

The proposed regulations provide in new 24 CFR 888.113(h) that Small Area FMRs also apply to project-based vouchers (PBVs), under certain conditions, when HUD designates a metropolitan area or approves a PHA jurisdiction for application of Small

Area FMRs. The application of Small Area FMRs to PBVs occurs when a PHA notice of owner selection of existing regulations in 24 CFR 983.51(d) was made after the effective date of Small Area FMR designation.

The proposed rule provides HUD will designate Small Area FMR areas at the beginning of a Federal fiscal year and make additional area designations every 5 years thereafter as new data becomes available.

C. Costs and Benefits of This Proposed Rule

The main benefit of the proposed rule is that, through setting rental subsidy amounts at a more local level, assisted households will be more able to afford homes in areas of high opportunity than under current policy. Such moves are expected to benefit both individual households, for example, through access to better schools or safer neighborhoods, and areas as a whole through reducing concentrated neighborhood poverty. Other benefits could arise through the reduction of overpayment of rent in areas where the neighborhood rent is below the metropolitan average. Early evidence from current Small Area FMR locations suggests that there could be per-voucher cost decreases relative to 50th percentile rents, depending on the choices made by tenants. Evidence also suggests that families moved to better neighborhoods with higher rents, which resulted in no overall program cost increases.[1] Finally, the proposed rule would eliminate the year to year volatility of some areas changing to and from 50th percentile FMRs.

Potential costs of the proposed rule include the administrative expenses associated with implementation on the part of PHAs. Additionally, if there are barriers to households moving to areas of higher opportunity beyond housing costs, such as transportation expenses or social factors, assisted households might be worse off if they can no longer afford their current units in their neighborhoods. This may be particularly true for elderly families or families with a disabled member; however, HUD regulations, not changed by this proposed rulemaking, allow PHAs wide latitude in setting payments standards for disabled tenants as "reasonable accommodations" of their disabilities. Finally, if the long-term impacts of the proposed rule cause per-voucher costs to rise, fewer households would receive assistance without an overall increase in program funds.

II. Background

The Housing Choice Voucher Program and Fair Market Rents

HUD's HCV program helps low-income households obtain standard rental housing and reduces the share of their income that goes toward rent. Vouchers issued under the HCV program provide subsidies that allow individuals and families to rent eligible units in the private market. A key parameter in operating the HCV program is the FMR. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. In addition, all rents subsidized under the HCV program must meet rent reasonableness standards. Rent reasonableness is determined by PHAs with reference to rents for comparable unassisted units.

In the HCV program, the FMR is the basis for determining the "payment standard amount" used to calculate the maximum monthly subsidy for a voucher household (see 24 CFR 982.503). PHAs may establish payment standards between 90 and 110 percent of the FMR.[2] Voucher program households receive a housing assistance payment equal to the difference between the payment standard established by the PHAs and the family's Total Tenant Payment (TTP), which is generally 30 percent of the household's adjusted monthly income. Participants in the voucher program can choose to live in units with gross rents higher than the payment standard, but would be required to pay the full cost of the difference between the gross rent and the payment standard, in addition to their TTP. Please note that at initial occupancy the family's share cannot exceed 40 percent of monthly adjusted income.

HUD establishes FMRs for different geographic areas. Because payment standards are based on FMRs, housing assistance payments on behalf of the voucher household are limited by the geographic area in which the voucher household resides. Currently, HUD calculates FMRs for all nonmetropolitan counties and metropolitan areas. The same FMR is applicable throughout a nonmetropolitan county or metropolitan area, which generally is comprised of several metropolitan counties. FMRs in a metropolitan area (Metropolitan FMR) represent the 40th percentile (or in special circumstances the 50th percentile) gross rent for typical non-luxury, non-substandard rental units occupied by recent movers in a local housing market.[3]

As noted earlier, PHAs may set a payment standard between 90 percent and 110 percent (inclusive) of the FMR. PHAs may determine that payment standards that are higher than 110 percent, or lower than 90 percent, are appropriate for subareas of their market; in this instance, a PHA would request HUD approval for a payment standard below 90 percent or an exception payment standard above 110 percent. The total population of a HUD-approved exception payment area (*i.e.*, an area covered by a payment standard that exceeds 110 percent of the FMR) may not include more than 50 percent of the population of the FMR area (see 24 CFR 982.503).

On October 2, 2000, at 65 FR 58870, HUD published a rule (2000 rule) establishing HUD's current policy to set FMRs at the 50th percentile for "areas where higher FMRs are needed to help families, assisted under HUD's Housing Choice Voucher Program as well as other HUD programs, find and lease decent and affordable housing." This policy was put in place to achieve two program objectives: (1) Increase the ability of low-income families to find and lease decent and affordable housing; and (2) provide low-income families with access to a broad range of housing opportunities throughout a metropolitan area. The policy further provides that PHAs that had been authorized to use FMRs set at the 50th percentile rent may later be required to use FMRs set at the 40th percentile rent. This would occur if the FMR were set at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area for three years, but the concentration of voucher holders in the metropolitan area did not lessen.

Since HUD established the 50th percentile FMRs 15 years ago, research has emerged[4] that indicates that 50th percentile FMRs are not an effective tool in increasing HCV tenant moves from areas of low opportunity to higher opportunity areas. Specifically, it appears that much of the benefit of increased FMRs simply accrues to landlords in lower rent submarket areas in the form of higher rents rather than creating an incentive for tenants to move to units in communities with more and/or better opportunities. As currently provided in regulation, to determine the 50th percentile program's effectiveness, HUD must measure the reduction in concentration of HCV tenants (objective 2 above) presumably from high poverty areas, over a 3-year period. If there is no measurable reduction in the concentration of HCV tenants, the FMR area loses the 50th percentile FMRs for a 3-year period. A large number of areas have been disqualified from the 50th percentile program for failure to show measurable reduction in voucher concentration of HCV tenants since 2001 when the program started, which strongly suggests that the deconcentration objective is not being met.[5]

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[1] Please see Collinson and Ganong, "The Incidence of Housing Voucher Generosity", available at: *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2255799.*

[2] Moving to Work (MTW) agencies have the authority to waive 24 CFR 982.503 and can propose, for HUD approval, alternate rent policies in their Annual MTW Plan.

[3] General information concerning FMRs including more detailed information about their calculation is available at *https://www.huduser.gov/portal/datasets/fmr.html.*

[4] From 2000 to 2010, however, voucher concentration *rose* in the largest metro areas, even though most of those areas used 50th percentile FMRs for at least part of that period. Kirk McClure, Alex F. Schwartz, and Lydia B. Taghavi, "Housing Choice Voucher Location Patterns a Decade Later," November, 2012, p 7. In 2010, 24 percent of vouchers in the 50 largest areas were used in tracts

History of Small Area FMRs

Since the establishment of the 50th percentile program, HUD has developed Small Area FMRs to reflect rents in ZIP code based areas with a goal to improve HCV tenant outcomes. Small Area FMRs have been shown to be a more direct approach to encouraging tenant moves to housing in lower poverty areas by increasing the subsidy available to support such moves.[6] Since 2010, when the United States Census Bureau made available data collected over the first 5 years of the American Community Survey (ACS), HUD has considered various methodologies that would set FMRs at a more granular level. HUD's goal in pursuing the Small Area FMR methodology is to create more effective means for HCV tenants to move into higher opportunity, lower poverty areas by providing them with subsidy adequate to make such areas accessible and to thereby reduce the number of voucher families that reside in areas of high poverty concentration.

Toward this end, through a **Federal Register** notice published on May 18, 2010, at 75 FR 27808, HUD announced that in Fiscal Year (FY) 2011 it would seek to conduct a Small Area FMR demonstration project to determine the effectiveness of FMRs which are published using U.S. Postal Service ZIP codes as FMR areas within metropolitan areas. HUD also solicited public comment on the proposed demonstration. On November 20, 2012, at 77 FR 69651, HUD announced the commencement of the Small Area FMR Demonstration, for which advance notice was provided on May 18, 2010, and further announced the participation of the following PHAs: The Housing Authority of the County of Cook (IL), the City of Long Beach (CA) Housing Authority, the Chattanooga (TN) Housing Authority, the Town of Mamaroneck (NY) Housing Authority, and the Housing Authority of Laredo (TX).

Through a second **Federal Register** notice published on August 4, 2010, at 75 FR 46958, HUD mandated the use of Small Area FMRs in place of metropolitan-area-wide-FMRs to settle litigation in the Dallas, TX, HUD Metro FMR Area.

While HUD awaits the overall evaluation of the demonstrations for wide-scale implementation, HUD is proposing the use of Small Area FMRs as an effective alternative to the 50th percentile for addressing high levels of voucher concentration. If HUD has additional data and information on the effects of these demonstrations prior to publishing the final rule, HUD will analyze, review and release those data prior to publishing a final rule.

Small Area FMRs have been in operation in Dallas, Texas, as part of a court settlement since 2010, and in a small number of PHAs since 2012. There is encouraging evidence from Dallas which finds that under Small Area FMRs voucher households in Dallas who chose to move are moving to significantly safer and lower poverty neighborhoods, with about the same average costs for vouchers overall. Collinson and Ganong find that Dallas tenants who have chosen to move since the implementation of Small Area FMRs have moved to higher quality neighborhoods in the southern and eastern portions of the metropolitan area from the lowest quality inner city neighborhoods.

Based on HUD's research and HUD's experience with the Small Area FMR demonstrations, HUD believes that amending its current FMR regulation to adopt the Small Area FMR methodology would provide HCV tenants with greater access to areas of opportunity. As a first step in this direction, on June 2, 2015, at 80 FR 31332, HUD published an advance notice of proposed rulemaking (ANPR) entitled "Establishing a More Effective Fair Market Rent (FMR) System; Using Small Area Fair Market Rents (Small Area FMRs) in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs." In this ANPR, HUD announced its intention to amend HUD's FMR regulations applicable to the HCV program to provide HCV tenants with subsidies that better reflect the localized rental market, including subsidies that would be relatively higher if they move into areas that potentially have better access to jobs, transportation, services, and educational opportunities. The ANPR sought public comment on the use of Small Area FMRs for the HCV program within certain metropolitan areas. HUD received 78 public comments in response to the ANPR. Later in this preamble, HUD identifies and responds to significant issues raised by the commenters.

III. This Proposed Rule

Through this rulemaking, HUD proposes to eliminate the use of 50th percentile FMRs as a means to reduce HCV tenant concentration and implement, in its place, Small Area FMRs. HUD's current policy for addressing areas in which voucher holders are particularly concentrated is based on a 2000 rule, which established the regulations allowing use of the 50th percentile rents, rather than the 40th, based on certain criteria which areas must meet. The regulations codified by the 2000 rule also specified criteria to be used in evaluating areas using the 50th percentile. The evaluation criteria yielded the unintended consequence of areas cycling in and out of 50th percentile FMRs.

In this rulemaking, HUD proposes to establish FMRs for certain metropolitan areas using ZIP codes within the metropolitan area. HUD also proposes the following criteria to determine which FMR areas would use Small Area FMRs for their voucher program operations:

1. Current HUD Metropolitan FMR areas where there are at least 2,500 HCVs under lease; and
2. Where at least 20 percent of the standard quality rental stock,[7] within

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where at least 10 percent of households used vouchers, compared to 16 percent in 2000, p 7.

[5] Areas may subsequently requalify for 50th percentile status after a 3-year period.

[6] Please see Collinson and Ganong, "The Incidence of Housing Voucher Generosity", available at: *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2255799.*

[7] To ensure that units are suitable for voucher participants, HUD will use its special tabulations of American Community Survey data in assessing the location of rental units. Specifically, HUD will use the distribution of Adjusted Standard Quality Rental Units. Standard quality units are designated rental units, where the renter pays cash rent. The unit must be on less than 10 acres, have complete plumbing and kitchen facilities and does not include meals in rent. In order to also eliminate units that are likely to be assisted or otherwise unsuitable for HCV tenants, HUD also provides the

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the Metropolitan FMR, is in Small Areas (ZIP codes) where the Small Area FMR is more than 110 percent of the metropolitan FMR; and

3. HUD measurement of the percentage of voucher holders living in concentrated low-income areas relative to all renters within these areas exceeds 155 percent (or 1.55). HUD will calculate the percentage of HCV holders living in concentrated low income areas within each metropolitan FMR area using the count of HCV renters living in concentrated low-income areas divided by the count of HCV renters in the metropolitan FMR Area. HUD will then calculate the percentage of renter occupied units in concentrated low income areas within each metropolitan area using the count of renter occupied units in concentrated low income areas within each metropolitan FMR area divided by the count of renter occupied units within the metropolitan FMR area. HUD will divide the voucher percentage by the renter occupied unit percentage to arrive at a propensity or likelihood that a voucher holder is more likely to live in a concentrated low-income area than are renters in general. If this measure over the entire metropolitan area exceeds 155 percent (or 1.55) the area qualifies.[8]

For the purposes of this proposed rule, "concentrated low-income areas" are defined as those Census tracts in the metropolitan FMR area with a poverty rate of 25 percent or more, or any tract in the metropolitan FMR area where at least 50 percent of the households earn less than 60 percent of the area median income and are designated as Qualified Census Tracts (QCT) in accordance with section 42 of the Internal Revenue Code (26 U.S.C. 42). HUD is using the QCT income qualification standards as it is a normalized measure of low income to cover roughly the same population in each metropolitan area. Appendix A of this proposed rule lists the areas that currently meet the three criteria listed above. All other HUD programs that use FMRs would continue to use metropolitan area-wide FMRs.

In addition to amending § 888.113 to remove the 50th percentile FMR approach and establish a Small Area FMR based approach, HUD proposes to amend the following regulatory provisions in order to facilitate operation of the voucher program under the Small Area FMR based approach:

1. HUD proposes to update paragraph (d) to provide that FMR areas include metropolitan and nonmetropolitan areas and Small Areas using ZIP Codes within the metropolitan area. HUD also proposes to revise § 888.113(e) to reflect current data sources used to determine FMRs and paragraphs (f), and (g) to reflect current terminology used in determining FMRs.

2. HUD proposes to add paragraph (h) to § 888.113 to address the transition of project based voucher (PBV) assistance to Small Area FMRs. Specifically, HUD proposes to make the Small Area FMRs only applicable to PBV projects where the PHA notice of owner selection is made after the effective date of the Small Area FMR designation. For all other PBV projects (those projects under an Housing Assistance Payment (HAP) contract or where the PHA notice of owner selection was made an Agreement to enter into a Housing Assistance Payment (AHAP) contract prior to the effective date of the Small Area FMR designation), the metropolitan-wide FMR will remain applicable to the project unless the owner and the PHA mutually agree to use the Small Area FMR.

3. HUD proposes to add paragraph (i) to § 888.113 to address the transition of those areas designated 50th percentile FMRs for which the 3-year period has not expired prior to the effective date of this rule. As proposed, a metropolitan area designated as 50th percentile FMR area that is designated for Small Area FMRs in accordance with § 888.113(c) will transition to the Small Area FMRs upon the effective date of the Small Area FMR designation. For 50th percentile FMR areas that are not designated as Small Area FMR areas in accordance with § 888.113(c), the area will remain under 50th percentile FMRs until the expiration of the three-year period, at which time the metropolitan area will revert to the standard FMRs based on the 40th percentile rent. HUD does not propose removing the ability of PHAs with jurisdictions within an FMR area reverting to the standard 40th percentile FMR to request HUD approval of payment standard amounts based on the 50th percentile rent in accordance with the requirements of § 982.503(f). To implement this transition, and establish success rate payment standards amounts in accordance with § 982.503(e), paragraph (i)(3) provides that HUD will continue to determine the 50th percentile rents. As is the case for determining 40th percentile rents, the 50th percentile rents will be drawn from the distribution of rents of all units that are occupied by recent movers and adjustments are made to exclude public housing units, newly built units and substandard units.

4. HUD proposes to amend two regulatory provisions in part 982. Part 982 contains HUD's regulations for the Section 8 Tenant-Based Assistance: Housing Choice Voucher Program. Specifically, HUD proposes to:

a. Amend § 982.503, which addresses "Payment standard amount and schedule." This rulemaking proposes to amend § 982.503(c), which addresses HUD approval of exception payment standard amount and which currently reflects the 40th and 50th percentile rent method. This paragraph would be amended to reflect the changes proposed to § 888.113 to implement Small Area FMRs. Specifically, the current regulation for exception payment standards relies on rent differentials between a small portion of an FMR area and the FMR area itself and includes limitations on the size of the exception area based on the population of the FMR area. This new regulation is constructed to account for the FMR area now being defined as a ZIP code within certain metropolitan areas.

b. In part 982, HUD would also amend § 982.507(a)(2)(ii), which addresses "Rent to owner: Reasonable Rent" to provide for PHAs using Small Area FMRs, rent reasonableness redeterminations would be triggered if there is a 10 percent or greater decline in FMRs.

5. In part 983, HUD proposes to amend § 983.302(a)(2), which addresses "Redetermination of rent to owner" to provide that for PHAs designated to use Small Area FMRs, rent reasonableness redeterminations would be triggered if there is a 10 percent or greater decline in FMRs.

6. HUD would also amend HUD's Section 8 Management Assessment Program (SEMAP) regulations in part 985, to amend § 985.3, which addresses "Indicators, HUD verification methods and ratings." The proposed rule would amend this section to provide that the reasonable rent indicator would, for PHAs designated to use Small Area FMRs, reference, similar to § 982.507, the 10 percent decline in FMRs in lieu of the 5 percent decline in FMRs currently referenced.

IV. Overview of ANPR Comments and HUD Responses

As noted earlier in this preamble, on June 2, 2015, HUD published an ANPR requesting public comment on replacing

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Census Bureau with a "public housing cut off" rent. The Census Bureau adjusts the distribution of standard quality units by eliminating any unit in the distribution of gross rents with rents below the cut off.

[8] For any given metro area this is $(HCV_{lo}/HCV_{m})/(ROU_{lo}/ROU_{m})$ where HCV is the count of voucher tenants, ROU is the number of renter occupied units, *lo* represents the set of low opportunity tracts in the metropolitan area, and *m* represents the entire metropolitan area.

the 50th percentile FMR approach with the Small Area FMR approach. By the end of the public comment period on July 2, 2015, HUD received 78 public comments. The following presents a general summary of the comments received and HUD's response to those comments:

Comment: Complete the current demonstration. Several commenters urged HUD to take no further action in moving Small Area FMRs forward until the current Small Area FMR demonstration is concluded and a report has been issued examining the results of the demonstration.

HUD Response: HUD agrees that concluding the current demonstration and reviewing the results is an important step before deciding whether or not to implement Small Area FMRs for all metropolitan FMR areas. However, research shows that 50th percentile FMRs do not provide adequate subsidy to help voucher holders find suitable units in areas of opportunity. While 50th percentile FMRs increase the level of subsidy across the entire FMR area, Small Area FMRs better target opportunity areas by raising the FMRs in these specific areas. Furthermore, regulations pertaining to deconcentration and tri-annual recertifications may cause areas to cycle in and out of the 50th percentile program. This cycling is detrimental to the operations of the HCV program and the HCV tenants in these areas, which is why HUD is proposing to remove the 50th percentile approach, and replace it with a Small Area FMR based approach. HUD described the selection criteria in section III of this preamble. The criteria were selected such that the voucher concentration in low-income neighborhoods relative to all rental units and the proportion of all rental units with Small Area FMRs above the basic range exceed the national averages. The areas that meet these criteria by current data include about 564,000 voucher tenants, however not all of these voucher tenants will necessarily be affected because these areas contain several Moving-to-Work Demonstration PHAs that may or may not use Small Area FMRs.

Comment: Small Area FMR approach would run the risk that units currently with vouchers would not be renewed in HCV program. HUD received many comments from property owners, landlords and other housing providers that expressed this concern. These comments generally focused on property owners/managers with current voucher tenants, typically within the city of Baltimore, Maryland. These comments suggested that if HUD were to move to Small Area FMRs, these units would not be renewed in the voucher program because the rents for the units would be too low.

HUD Response: These units would be renewed if the family chooses to remain and the rent is reasonable. Furthermore, HUD believes that the use of Small Area FMRs removes a barrier that tenants currently have in accessing housing units in areas of opportunity; namely, that subsidy levels are not high enough to afford rental units in these high opportunity neighborhoods. HUD further believes that if housing authorities determine that current rents in areas with declining Small Area FMRs are reasonable, tools are in place to address these situations (exception payment standards, reasonable accommodation, etc.)

Comment: Small Area FMR approach would increase administrative burden. Several commenters expressed concern that Small Area FMRs would increase the administrative burden of operating the voucher program. Commenters stated that this concern is compounded because, as they stated, their administrative fee payments are inadequate to meet administrative costs.

HUD Response: HUD recently released a final report on the costs of running a high performing housing authority[9] and HUD is currently engaged in a proposed rulemaking effort regarding the administrative fee formula. Consequently, this proposed rule does not address the adequacy of administrative fees. HUD has undertaken several steps to minimize the burden of implementing Small Area FMRs. One of these ways is to round Small Area FMRs to the nearest ten dollars to make it easier to arrange the small areas into payment standard groups.

Comment: HUD should address the consequence for voucher tenants who choose not to move to units where Small Area FMR is below current metropolitan FMR. Commenters expressed concern about what happens to tenants who choose not to move from their housing units in areas where the Small Area FMR is below the current Metropolitan FMR. Commenters also expressed concern that a significant and abrupt decrease in the FMR for ZIP code areas could reduce housing choices for families by closing opportunities in low-rent areas before new opportunities emerge in higher rent areas.

HUD Response: Under the current FMR regulations, tenants in areas where the payment standard decreases do not face lower housing assistance payments until the second annual reexamination of income following the payment standard decline. Depending on the timing of income reexaminations, tenants will have between 13 and 24 months advanced notification prior to experiencing the payment standard decreases. HUD is not proposing any specific changes in this proposed rule to the existing payment standard reduction protections for families currently under a housing assistance payment (HAP) or the existing methodology by which the Small Area FMRs are currently determined. If the PHA determines that higher rents are warranted in a particular area, PHAs are encouraged to apply for exception payment standards under § 982.503(c). PHAs may seek payment standard waivers for reasonable accommodations.

Specific solicitation of comment: HUD is specifically seeking comment on these issues for areas that are transitioning to Small Area FMRs under this proposed rule so that HUD may make a more informed decision on incorporating protections in the final rule. HUD is particularly interested in suggestions that may alleviate the above concerns without appreciably increasing administrative complexity and burden in the HCV program. Please see Section V, Request for Comments, below.

Comment: Use of Small Area FMRs as they related to project-based voucher (PBV) units. In the ANPR, HUD solicited comment on the use of Small Area FMRs as they relate to PBV subsidized units. HUD received several comments in response to this specific solicitation. The commenters' recommendations went in a variety of directions (*i.e.,* some suggested no PBV should use Small Area FMRs, some suggested only new PBVs should use Small Area FMRs, and others suggested that all PBV use Small Area FMRs)

HUD Response: In the PBV program, FMRs will impact the location of PBV projects because the rent to the owner generally may not exceed 110 percent of the applicable FMR for the bedroom count minus any utility allowance. Applying Small Area FMRs to project-based vouchers may further improve locational outcomes and deconcentrate poverty because the PHA may be able to establish PBV rents that will make projects financially feasible in higher opportunity neighborhoods that are typically out of reach under the metropolitan area FMRs. Project-based vouchers can be a very effective strategy for increasing the supply of rental units available to voucher families in areas of opportunity, especially in those neighborhoods where the number of private rental units and landlords willing to participate in the program may otherwise be very limited.

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[9] Housing Choice Voucher Program Administrative Fee Study: Final Report (available at: *http://www.huduser.gov/portal/publications/affhsg/hcv_2015draftfinalreport.html*).

While Small Area FMRs present a promising opportunity to improve locational outcomes with respect to future PBV projects, HUD acknowledges that transitioning to Small Area FMRs could have negative consequences for some existing PBV projects. For example, PBV assistance has been used to support reinvestment efforts in neighborhoods that have historically experienced disinvestment. These projects (and other existing PBV projects) may be located in ZIP code areas where the Small Area FMRs are substantially lower than the metropolitan-wide FMRs. Some PBV projects may have long-term financing that relies on projected rental income that was based on metropolitan-wide FMRs. Applying the Small Area FMRs to future rent determinations may result in significant reductions in project income. These PBV projects are an important component of the affordable housing stock in many communities and HUD agrees it is important not to place them at financial risk when the area is transitioning to Small Area FMRs.

HUD is therefore proposing to make the Small Area FMRs only applicable to PBV projects where the PHA notice of owner selection under § 983.51 was made after the effective date of the area's designation as a Small Area FMR area. For a PBV project that is already under AHAP or HAP contract before the effective date of the Small Area FMR designation, or where the PHA notice of owner selection was made prior to the effective date of the Small Area FMR designation, the Small Area FMRs will not apply. Instead, the metropolitan-wide FMRs will remain applicable to the project, unless the PHA and the owner mutually agree to apply the Small Area FMRs to the project.

The application of the Small Area FMRs to a PBV project by mutual agreement of the PHA and the owner must be prospective, and the owner and PHA may not subsequently choose to revert to the metropolitan area FMRs. If the rent to owner will increase as a result of the mutual agreement, the owner's rent increase may not go into effect until the first annual anniversary of the HAP contract in accordance with § 983.302(b). If the PHA intends to offer owners the opportunity to mutually agree to apply the Small Area FMR to PBV projects, the PHA's policies must be included in the PHA's administrative plan.

Comment: Small Area FMRs will curtail redevelopment. Several commenters expressed concern that use of Small Area FMRs will curtail redevelopment.

HUD Response: The primary of objective of the tenant based HCV program is to provide families receiving assistance with the opportunity to find suitable dwellings throughout the market area. Rather than determining or influencing rents in an area, metro FMRs and Small Area FMRs are meant to reflect spatial variation in market rents. As such, we would not expect them to be the drivers of re-development, which is not easily accomplished with tenant-based subsidies. This is true at either the metro FMR or Small Area FMR level. By design, the voucher program is not a redevelopment program nor is it intended to be a catalyst for urban renewal. HUD has a variety of place based programs which are designed to spur redevelopment.

Comment: Use of Small Area FMRs should be voluntary. Some commenters stated that the use of Small Area FMRs should be completely voluntary.

HUD Response: In order for Small Area FMRs to work in expanding choice for voucher holders within designated metropolitan areas, all PHAs operating in the FMR area would be required to use Small Area FMRs. It is further noted that a PHA outside of a HUD designated Small Area FMR area may opt to use Small Area FMRs by requesting approval from HUD to do so.

Comment: The only selection criteria should not be poverty. Commenters stated that poverty should not be the only selection criteria.

HUD Response: Recent research demonstrates that long term outcomes for families are improved the sooner the family is able to move out of areas with high poverty rates.[10] However, HUD agrees with commenters that additional criteria should be used to determine targeted areas. Therefore, HUD has added an income-based criterion to the area selection algorithm to identify places where a majority of families qualify for HUD rental assistance but the area would not qualify as high poverty under a strict poverty only threshold. Specifically, areas where more than 50 percent of the households have incomes below 60 percent of area median family income and are designated as QCTs but do not have poverty rates in excess of 25 percent are eligible for to be identified as a Small Area FMR metropolitan area, if the other selection criteria (number of vouchers, concentration of vouchers) are met. By using an income-based criterion in addition to a strict poverty based criterion, HUD strives to ensure that lower income families have expanded access to areas of opportunity even if they are not currently living in areas with high concentrations of voucher holders in extreme poverty conditions.

Comment: ZIP Codes may be too large and not constitute a housing market. Commenters are concerned that even within ZIP codes, there is significant variation among rents and Small Area FMRs do not capture these nuances.

HUD Response: PHAs will still have the ability to establish separate payment standard amounts for designated areas within an FMR area, so in cases where rents vary significantly, PHAs will be able to set multiple payment standards within a ZIP code. PHAs will also have the opportunity to request exception payment standards within ZIP codes.

V. Request for Comments

While HUD seeks comment on all aspects of this proposed rule, HUD specifically seeks comment on the following topics:

1. Should HUD provide for PBVs that are in the pipeline to continue using metropolitan FMRs even if the area is designated as a Small Area FMR area? Additionally, should HUD require newly proposed PBVs post Small Area FMR designation to use Small Area FMRs?

2. The proposed rule provides for Small Area FMR area selection parameters to be codified in regulatory text. HUD is seeking comment on whether these parameters should be codified or should be incorporated into each annual proposed FMR notice to provide HUD, PHAs, and other stakeholders with flexibility, in any given fiscal year, to offer changes to these selection parameters and have the opportunity to comment before any changes to the parameters are made.

3. Several commenters to HUD's ANPR suggested that HUD provide for tenant rent protections in ZIP codes where the Small Area FMR is below the metropolitan area and tenants choose not to move. No additional tenant protections were instituted for tenants serviced by PHAs accepting HUD's invitation to participate in the Small Area FMR demonstration nor were additional tenant protections implemented for tenants living in the Dallas, TX HUD Metropolitan Area when Small Area FMRs were implemented there. However, as part of a transition strategy between Metropolitan FMRs and Small Area

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[10] Chetty, Raj, Nathaniel Hendren, and Lawrence Katz, 2016. "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Project." American Economic Review 106 (4).

FMRs, HUD seeks comment on what additional policies or requirements the final rule should include that would mitigate the impact of significant and abrupt decreases in the FMRs for certain ZIP code areas on families currently under HAP contract in those impacted areas.

4. Related to question 3, HUD seeks comment on whether the final rule should limit the potential decline in the FMR for a ZIP code area resulting from the implementation of Small Area FMRs in order to ensure that sufficient housing opportunities remain available to voucher holders? If so, HUD seeks recommendations on specific policies or requirements that should be included in the final rule to achieve the desired outcome.

a. For example, an approach would be to allow the PHA to establish exception payment standards above the basic range for impacted ZIP code areas meeting certain conditions through a streamlined HUD approval process. One example of this may be that PHAs could have the discretion of setting their payment standards at up to 130 percent of the Small Area FMR in the 1st year of transition, at up to 120 percent of the Small Area FMR in the 2nd year of transition, and at up to 110 percent of the Small Area FMR in the 3rd and subsequent years following implementation.

b. With respect to protections for tenants currently under HAP contract, one possibility may be to increase the amount of time that the family is held harmless from a decrease in the payment standard. For instance, instead of the lower payment standard going into effect on the second reexamination following the effective date of the decrease in the payment standard, the final rule could provide that the lower payment standard would not go into effect for a family under HAP contract until a later re-examination (*e.g.*, third, fourth, or fifth reexamination).

5. The proposed rule adds a new paragraph (i) to § 888.113 to address the transition of metropolitan areas that were previously subject to 50th percentile FMRs. HUD believes that the Small Area FMR methodology will provide HCV tenants with greater access to areas of opportunity than metropolitan area wide 50th percentile FMRs. As a result, this rule proposes that a 50th percentile metropolitan area designated for Small Area FMRs would transition to Small Area FMRs on the effective date of the Small Area FMR designation. HUD is also proposing that a 50th percentile FMR area that is not designated for Small Area FMRs would remain under the 50th percentile FMRs until the end of the existing 3-year period for the 50th percentile FMRs prior to reverting to the standard 40th percentile FMRs. The rule does not eliminate provisions that permit a PHA with jurisdiction in a 50th percentile FMR area that reverts to the standard 40th percentile FMR to request HUD approval of payment standard amounts based on the 50th percentile rent in accordance with the existing § 982.503(f); however, HUD is specifically seeking comment on whether this provision should be eliminated in order to phase out the use of 50th percentile rents for deconcentration purposes. HUD would also appreciate comments as to whether or not the current SEMAP deconcentration standard is appropriate as the basis for PHAs requesting HUD to approve payment standards based on 50th percentile rents under existing § 982.503(f).

HUD is specifically seeking comment on these proposed polices, as well as suggestions for alternative approaches or other recommendations on how best to phase-out 50th percentile rent FMRs for impacted metropolitan areas and transition the area to either the Small Area FMRs or the standard metropolitan-wide 40th percentile FMRs.

6. HUD is specifically seeking comment on how to reduce the administrative burden on PHAs and simplify the transition to Small Area FMRs. For example, HUD is proposing to change the percentage decrease in FMRs that triggers rent reasonableness redeterminations from 5 percent to 10 percent for Small Area FMR PHAs. HUD requests comments, however, regarding whether 10 percent is the right trigger for program-wide rent reasonableness redetermination, whether HUD should limit this proposal to Small Area FMR decreases, or also change the percentage of decrease that triggers rent reasonableness for all FMRs, and whether it should revise the trigger for program-wide rent reasonableness redeterminations at all. In regards to potentially expanding the 10 percent trigger for rent reasonableness redetermination to a program-wide requirement, HUD seeks comments on the trade-offs between administrative relief and decreased program oversight on rent levels. HUD also requests comments on what other changes would reduce the potential administrative burden and complexity for PHAs impacted by the implementation of Small Area FMRs.

7. HUD is currently proposing, through this rulemaking, to expand the use of Small Area FMRs within the HCV program. HUD seeks public comment as to whether or not other HUD rental assistance programs would benefit from using Small Area FMRs in their operations. For example, would the rental assistance component of the Housing Opportunities for Persons with AIDS (HOPWA) programs be a candidate for Small Area FMR treatment? Frequently, metropolitan FMRs are inadequate for HOPWA-assisted tenants to find units near health care facilities, or in neighborhoods with better job opportunities. Should the HOPWA program regulations be amended to allow participating jurisdictions the flexibility to set tenant-based assistance rents according to Small Area FMRs either in areas that would be designated Small Area FMR areas or for the HOPWA program more generally? Would other HUD programs benefit as well?

8. As currently proposed, the Small Area FMR policy would apply to all residents within a ZIP code who receive housing vouchers. HUD seeks comment on whether there are certain situations or any specific groups of voucher recipients within the general population, such as persons with disabilities or elderly voucher recipients, where an alternate policy should apply that should exempt them from having their voucher level change as a result of this policy due to specific hardships they may encounter by having to choose between staying in their current area and receiving a smaller voucher or moving to a new area for the sake of obtaining a larger voucher?

9. Are there specific groups within the general population of voucher holders for whom this policy change would be particularly burdensome? What are the ways in which this policy change could create a disproportionate burden on certain groups like elderly and disabled voucher holders?

10. HUD is seeking comment on the criteria that HUD selected for determining which metropolitan areas should be impacted by the shift to a Small Area FMR instead of the current 50th percentile policy. Did HUD use the correct criteria in making these choices? What other criteria should HUD be using to select metropolitan areas that will be impacted by this rule change and why are those criteria important?

11. The proposed rule makes no changes to 24 CFR 888.113(g), the FMR for Manufactured home space rental for voucher tenants that own manufactured housing units. Under this proposed rule Small Area FMRs would apply to manufactured home space rentals in areas designated for Small Area FMRs

(*i.e.,* FMRs for space rentals would be set at 40 percent of the 2-bedroom Small Area FMR). Given the costly nature of moving a manufactured home, HUD is seeking comment on whether or not current voucher holders using their voucher for a manufactured home space should be exempt from Small Area FMRs at their current address?

12. HUD has proposed to amend the Exception Payment Standard rules at 24 CFR 982.503 to account for the fact that FMR areas in Small Area FMR designated metropolitan areas will be ZIP codes. HUD is seeking public comment to determine if there are other amendments HUD should make to the Exception Payment Standard Regulations to better facilitate the approval process of Exception Payment Standards. For example, the current exception payment standard regulations require that an exception payment standard may not include more than 50 percent of the population of the FMR area. This may be an impractical requirement when determining exception payment standards within a ZIP code. Similarly, given that ZIP codes more narrowly define the FMR area, the provision within the regulation that program justification may include helping families find housing outside areas of high poverty may not be applicable even though an exception payment standard may be necessary. Therefore, HUD is soliciting feedback to ensure that the exception payment standard regulations are revised so that PHAs may use this component of the regulations to optimize the administration of their HCV programs.

13. HUD makes administrative data for research into HUD's programs available in a variety of ways (*i.e.,* Public Use Microdata Sample—PUMS data, Research Partnerships, and Data License Agreements). HUD seeks comment on what additional data or dissemination strategies would be helpful to the public to assess the impact of the implementation of the Small Area FMR proposed rule.

VI. Commitment To Study Effectiveness of Rule

If following this proposed rule and consideration of public comments on this proposed rule, HUD proceeds to establish use of Small Area FMRs in the administration of the HCV program in areas where voucher tenants are disproportionately concentrated in high poverty neighborhoods, HUD recognizes the importance of monitoring the progress of use of Small Area FMRs in addressing high levels of voucher concentration. This proposed rule would set FMRs at the ZIP Code level as a tool to help voucher tenants deconcentrate rather than the current tool of FMRs being based on 50th percentile rents. The core hypothesis is that this will significantly expand the ability of HCV holders to access housing in neighborhoods with high-quality schools, low crime rates, and other indicators of opportunity, as well as integrated neighborhoods in support of HUD's goal of affirmatively furthering fair housing. However, HVC holders that choose to remain in lower-rent high-poverty neighborhoods will see a reduction in the subsidy provided by the voucher.

The move to expand the use of Small Area FMRs is a significant policy shift for HUD. Consequently, HUD believes that understanding the impact of the policy shift away from 50th percentile FMRs to using Small Area FMRs for deconcentration is important. There are a variety of avenues through which this policy review could be accomplished, in terms of assessing the direct effects on the primary goal of deconcentration, and in terms of long term, location-related impacts. Therefore, HUD is committed to partnering in these research efforts through a variety of channels including our current Research Partnerships, Data Licensing Agreements, as well as HUD-funded research efforts. Initial research efforts will likely focus primarily on location outcomes, such as neighborhood characteristics of voucher holders both pre- and post-implementation of this policy. This research will also look at the effect on after-rent incomes of voucher holders who move to new areas and of those who choose to stay in poorer neighborhoods. Longer term research efforts could expand to consider tenant outcomes and contribute to the growing research findings of the importance of neighborhood impacts, particularly on adult outcomes of children afforded the opportunity to move to higher quality neighborhoods.

The most immediate studies of nearer term effects of the rule, to be undertaken within 5 years of the effective date of a final rule, will focus on the following issues:

- ZIP-Code-level FMRs allow greater variation in payment standards within a metropolitan area. This increases the range of neighborhoods HCV recipients can access using vouchers relative to metro-wide FMRs. For examining these issues, research may focus on the potential of Small Area FMRs to increase access to opportunity by analyzing the characteristics of neighborhoods in the service areas of the Small Area FMR PHAs by the share of units renting below the FMR before and after introduction of Small Area FMRs. Additionally, the research in this arena would focus on the observed effect of the adoption of Small Area FMRs on location and relocation outcomes of both new and existing HCV families. Such outcomes may focus on neighborhood poverty rates pre- and post-implementation, as well as other neighborhood characteristics such as crime rates and school rankings. Voucher holders financial well-being may also be assessed through an examination of rent burdens both before and after the implementation of the Small Area FMR policy.
- Landlords' interest in and awareness of the HCV program may also be affected by a move to Small Area FMRs. HUD anticipates that higher payment standards in high-cost ZIP Codes would attract landlord interest while lower payment standards in low-cost ZIP Codes may discourage engagement with the program. The market response is likely to be based substantially on the extent to which the Small Area FMRs and the resulting payment standards actually provide sufficient funding to make it possible for tenants to rent units in areas of opportunity. While landlords in lower-cost neighborhoods may consider lowering (or not increasing) rent to retain a good tenant, it is less likely that landlords in opportunity areas will make rent concessions. However, landlords are still not required to participate in the HCV program so the success of Small Area FMRs in allowing HCV holders to access opportunity areas will depend on landlord willingness to participate in the program. Consequently, HUD may choose to study if the number of rental units in areas where the Small Area FMR is above the metropolitan FMR increases and/or the number of landlords offering those units increase.
- A switch to Small Area FMRs will also affect the local PHAs that administer the HCV program. The change in Small Area FMRs could ultimately alter the average amount PHAs pay to landlords for the units they offer. Initial estimates of the impact of Small Area FMR-based payment standards on program cost, where only tenants' current locations are observed and before any moves can happen, generally predict a reduction in average subsidy cost as current voucher tenants' locations bias toward lower rent ZIP Codes. If a large enough share of households respond to Small Area FMRs by more frequently moving to or selecting higher-cost areas, a PHA may be able to ultimately fund fewer

vouchers relative to the 40th percentile (or, alternatively, require additional funding from HUD to continue serving their baseline number of voucher-holders). The need to derive payment standards from Small Area FMRs rather than metro FMRs will likely require changes to PHAs' administrative processes and systems, particularly for the initial switch. Research in this area may rely upon HUD's administrative data comparing the changes in Housing Assistance Payment (HAP) costs over time. Furthermore, HUD may choose to assess the number of different payment standards the PHA administers through their annual SEMAP reporting.

In addition, HUD seeks public comment on any other issues to be included in a future retrospective review of a final Small Area FMR rule.

VII. Findings and Certifications

Regulatory Planning and Review

OMB reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). This rulemaking was determined to be an "economically significant regulatory action," as defined in section 3(f)(1) of the order. The accompanying Regulatory Impact Analysis (RIA) for this rulemaking addresses the costs and benefits that would result if this proposed rule were to be implemented can be found at *http://www.regulations.gov*. The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is not a toll-free number).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing (other than tenant-based assistance), rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. HUD has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the proposed rule, which is found in Appendix B to this proposed rule. HUD finds in the IRFA that this proposed rule will not have a significant economic impact on a substantial number of small entities. The IRFA, which is found in Appendix B to this proposed rule and can also be found at *www.regulations.gov,* elaborates, and provides details on how HUD made this finding. HUD invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives, as described in this preamble, and elaborated upon in the IRFA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive order are met. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for 24 CFR part 982 is 14.871.

List of Subjects

24 CFR Part 888

Grant programs—housing and community development, Rent subsidies.

24 CFR Part 982

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 985

Grant programs—housing and community development, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 888, 982, 983, and 985 as follows:

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT ANNUAL ADJUSTMENT FACTORS

■ 1. The authority statement for part 888 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535d.

■ 2. Revise § 888.113 to read as follows:

§ 888.113 Fair market rents for existing housing: Methodology.

(a) *Basis for setting fair market rents.* Fair Market Rents (FMRs) are estimates of rent plus the cost of utilities, except telephone. FMRs are housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units in the FMR area. FMRs are set at the 40th percentile rent, the dollar amount below which the rent for 40 percent of standard quality rental housing units fall within the FMR area. The 40th percentile rent is drawn from the distribution of rents of all units within the FMR area that are occupied by recent movers. Adjustments are made to exclude public housing units, newly built units and substandard units.

(b) *Setting FMRs at the 40th percentile rent.* Generally HUD will set the FMRs at the 40th percentile rent.

(c) *Setting Small Area FMRs.* (1) HUD will set Small Area FMRs for metropolitan FMR areas where:

(i) There are at least 2,500 Housing Choice Vouchers under lease; and

(ii) At least 20 percent of the standard quality rental stock, within the metropolitan FMR area is in small areas (ZIP codes) where the Small Area FMR is more than 110 percent of the metropolitan FMR; and

(iii) The measure of the percentage of voucher holders living in concentrated low income areas relative to all renters within these areas over the entire metropolitan area exceeds 155 percent (or 1.55).

(2) For purposes of determining applicability of Small Area FMRs to a metropolitan area, the term "concentrated low-income areas" means:

(i) Those census tracts in the metropolitan FMR area with a poverty rate of 25 percent or more; or

(ii) Any tract in the metropolitan FMR area where at least 50 percent of the households earn less than 60 percent of the area median income and are designated as Qualified Census Tracts in accordance with section 42 of the Internal Revenue Code (26 U.S.C. 42).

(3) If a metropolitan area meets the criteria of paragraph (c)(1) of this section, the metropolitan area will be designated a Small Area FMR and all PHAs administering HCV programs in that area will be required to use Small Area FMRs. A PHA administering an HCV program in a metropolitan area not subject to the application of Small Area FMRs may opt to use Small Area FMRs by seeking approval from HUD's Office of Public and Indian Housing (PIH) through written request to PIH.

(4) HUD will designate Small Area FMR areas at the beginning of a Federal fiscal year, and make such area designations every 5 years thereafter as new data becomes available.

(d) *FMR Areas.* FMR areas comprise metropolitan and nonmetropolitan areas and Small Areas FMR areas as follows:

(1) Generally, FMR areas are metropolitan areas and nonmetropolitan counties (nonmetropolitan parts of counties in the New England States). With several exceptions, the most current Office of Management and Budget (OMB) metropolitan area definitions of Metropolitan Statistical Areas (MSAs) are used because of their generally close correspondence with housing market area definitions. HUD may make exceptions to OMB definitions if the MSAs encompass areas that are larger than housing market areas. The counties deleted from the HUD-defined FMR areas in those cases are established as separate metropolitan county FMR areas. FMRs are established for all areas in the United States, the District of Columbia, Puerto Rico, the Virgin Islands, and the Pacific Islands.

(2) Small Area FMR areas are the U.S. Postal Service ZIP code areas within a designated metropolitan area.

(e) *Data sources.* (1) HUD uses the most accurate and current data available to develop the FMR estimates and may add other data sources as they are discovered and determined to be statistically valid. The following sources of survey data are used to develop the base-year FMR estimates:

(i) The most recent American Community Survey conducted by the U.S. Census Bureau, which provides statistically reliable rent data.

(ii) Locally collected survey data acquired through Address-Based Mail surveys or Random Digit Dialing (RDD) telephone survey data, based on a sampling procedure that uses computers to select statistically random samples of rental housing.

(iii) Statistically valid information, as determined by HUD, presented to HUD during the public comment and review period.

(2) Base-year recent mover adjusted FMRs are updated and trended to the midpoint of the program year they are to be effective using Consumer Price Index (CPI) data for rents and for utilities.

(f) *Unit size adjustments.* (1) For most areas the ratios developed incorporating the most recent American Community Survey data are applied to the two-bedroom FMR estimates to derive FMRs for other bedroom sizes. Exceptions to this procedure may be made for areas with local bedroom intervals below an acceptable range. To help the largest most difficult to house families find units, higher ratios than the actual market ratios may be used for three-bedroom and larger-size units.

(2) The FMR for single room occupancy housing is 75 percent of the FMR for a zero bedroom unit.

(g) *Manufactured home space rental.* The FMR for a manufactured home space rental (for the voucher program under 24 CFR part 982) is 40 percent of the FMR for a two bedroom unit.

(h) *Small Area FMRs and Project-based Vouchers.* (1) This paragraph applies to project-based voucher (PBV) assistance when HUD designates a metropolitan area or approves a PHA jurisdiction for Small Area FMRs under paragraph (c)(3) of this section.

(i) The Small Area FMRs apply to all PBV projects where the PHA notice of owner selection under 24 CFR 983.51(d) was made after the effective date of the Small Area FMR designation.

(ii) The metropolitan area FMRs continue to apply to PBV projects where the PHA notice of owner selection under 24 CFR 983.51(d) was made on or before to the effective date of the Small Area FMR designation, unless the PHA and owner mutually agree to apply the Small Area FMRs to the PBV project. This category includes all PBV projects that were under Housing Assistance Payment (HAP) contract or an Agreement to enter into a Housing Assistance Payment (AHAP) contract prior to the effective date of the Small Area FMR designation.

(iii) If the PHA and owner mutually agree to apply the Small Area FMR, the application of the Small Area FMRs must be prospective. The owner and PHA may not subsequently choose to revert back to the use of the metropolitan-wide FMRs for the PBV project. If the rent to owner will increase as a result of the mutual agreement to apply the Small Area FMRs to the PBV project, the rent increase shall not be effective until the first annual anniversary of the HAP contract in accordance with 24 CFR 983.302(b).

(2) For purposes of this section, the term "effective date of the Small Area FMR designation" means:

(i) The date that HUD designated a metropolitan area as a Small Area FMR area; or

(ii) The date that HUD approved a PHA request to voluntarily opt to use Small Area FMRs for its HCV program, as applicable.

(i) *Transition of metropolitan areas previously subject to 50th percentile FMRs.* (1) A metropolitan area designated as 50th percentile FMR areas for which the 3-year period has not expired prior to [Effective Date of the Final Rule] shall transition to Small Area FMRs as follows:

(i) A 50th percentile FMR area that is designated for Small Area FMRs in accordance with paragraph (c) of this section will transition to the Small Area FMRs upon the effective date of the Small Area FMR designation;

(ii) A 50th percentile metropolitan FMR area not designated as a Small Area FMRs in accordance with paragraph (c) of this section, will remain a 50th percentile FMR until the expiration of the three-year period, at which time the metropolitan area will revert to the standard FMR based on the

40th percentile rent for the metropolitan area.

(2) A PHA with jurisdiction in a 50th percentile FMR area that reverts to the standard 40th percentile FMR may request HUD approval of payment standard amounts based on the 50th percentile rent in accordance with 24 CFR 982.503(f).

(3) HUD will calculate the 50th percentile rents for certain metropolitan areas for purposes of this transition and to approve success rate payment standard amounts in accordance with 24 CFR 982.503(e). As is the case for determining 40th percentile rent, the 50th percentile rent is drawn from the distribution of rents of all units that are occupied by recent movers and adjustments are made to exclude public housing units, newly built units and substandard units.

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 3. The authority statement for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535d.

■ 4. Amend § 982.503 as follows:

■ a. Revise paragraphs (c)(2) introductory text and (c)(2)(ii);

■ b. In paragraph (f), introductory text, remove "§ 888.113(c)" and add in its place "§ 888.113(i)(3)"; and

■ c. In paragraph (f)(2), remove "§ 888.113(c)" and add in its place "§ 888.113(i)(3)";

The revisions to read as follows:

§ 982.503 Payment standard amount and schedule.

* * * * *

(c) * * *

(2) *Above 110 percent of FMR to 120 percent of published FMR.* The HUD Field Office may approve an exception payment standard amount from above 110 percent of the published FMR to 120 percent of the published FMR (upper range) if the HUD Field Office determines that approval is justified by the median rent method or the 40th percentile rent or the Small Area FMR method as described in paragraph (c)(2)(ii) of this section (and that such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section).

* * * * *

(ii) *40th percentile rent or Small Area FMR method.* In this method, HUD determines that the area exception payment standard amount equals application of the 40th percentile of rents for standard quality rental housing in the exception area or the Small Area FMR. HUD determines whether the 40th percentile rent or Small Area FMR applies in accordance with the methodology described in 24 CFR 888.113 for determining FMRs. A PHA must present statistically representative rental housing survey data to justify HUD approval.

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■ 5. Revise § 982.507(a)(2)(ii) to read as follows:

§ 982.507 Rent to owner: Reasonable rent.

(a) * * *

(2) * * *

(ii) If there is a 5 percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect 1 year before the contract anniversary, unless the Small Area FMRs under 24 CFR 888.113(c)(3) are applicable to the PHA, in which case the decrease in the published FMR is 10 percent or greater; or

* * * * *

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

■ 6. The authority statement for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535d.

■ 7. Revise § 983.301(a)(3) to read as follows:

§ 983.301 Determining the rent to owner.

(a) * * *

(3) The rent to owner is also redetermined in accordance with § 983.302.

* * * * *

■ 8. Revise § 983.302(a)(2) to read as follows:

§ 983.302 Redetermination of rent to owner.

(a) * * *

(2) When there is a five percent or greater decrease in the published FMR; unless the Small Area FMRs under 24 CFR 883.113(c)(3) are applicable to the PHA, in which case the decrease in the published FMR is ten percent or greater.

* * * * *

■ 9. Revise § 983.303(b)(1) to read as follows:

§ 983.303 Reasonable rent.

* * * * *

(b) * * *

(1) Whenever there is a 5 percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR in effect 1 year before the contract anniversary; unless the Small Area FMRs under 24 CFR 883.113(c)(3) are applicable to the PHA, in which case the decrease in the published FMR is ten percent or greater.

* * * * *

PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

■ 10. The authority statement for part 985 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

■ 11. In § 985.3 revise paragraphs (b)(1), (b)(3)(i)(B), and (b)(3)(ii) to read as follows:

§ 985.3 Indicators, HUD verification methods and ratings.

* * * * *

(b) * * *

(1) This indicator shows whether the PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units: At the time of initial leasing; if there is any increase in the rent to owner; at the HAP contract anniversary if there is a 5 percent decrease in the published fair market rent (FMR) in effect 60 days before the HAP contract anniversary, or a 10 percent or greater decrease in the published FMR if the Small Area FMRs under 24 CFR 883.113(c)(3) are applicable to the PHA. The PHA's method must take into consideration the location, size, type, quality and age of the units, and the amenities, housing services, and maintenance and utilities provided by the owners in determining comparability and the reasonable rent. (24 CFR 982.4, 24 CFR 982.54(d)(15), 982.158(f)(7) and 982.507)

* * * * *

(3) * * *

(i) * * *

(B) Based on the PHA's quality control sample of tenant files, the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable in accordance with § 982.507 of this chapter for at least 98 percent of units sampled at the time of initial leasing, if there is any increase in the rent to owner, and at the HAP contract anniversary if there is a 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary, or a 10 percent decrease in the published FMR if the Small Area FMRs under 24 CFR 883.113(c)(3) are applicable to the PHA. 20 points.

(ii) The PHA's SEMAP certification includes the statements in paragraph (b)(3)(i) of this section, except that the

PHA documents its determination of reasonable rent for only 80 to 97 percent of units sampled at initial leasing, if there is any increase in the rent to owner, and at the HAP contract anniversary if there is a 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary, or a 10 percent decrease in the published FMR if the Small Area FMRs under 24 CFR 883.113(c)(3) are applicable to the PHA. 15 points.

* * * * *

Dated: June 8, 2016.

Katherine O'Regan,

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The following appendixes will not be published in the Code of Federal Regulations.

Appendix A—HUD Metropolitan FMR Areas Proposed for Small Area FMRs

HUD Metropolitan Fair Market Rent Area	Voucher count*
New York, NY HUD Metro FMR Area	119,362
Chicago-Joliet-Naperville, IL HUD Metro FMR Area	62,472
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	32,631
Washington-Arlington-Alexandria, DC-VA-MD HUD Metro FMR Area	32,109
Atlanta-Sandy Springs-Marietta, GA HUD Metro FMR Area	28,697
Oakland-Hayward-Berkeley, CA Metro Division	28,355
Dallas-Plano-Irving, TX Metro Division	28,135
San Diego-Carlsbad-San Marcos, CA MSA	27,970
Tampa-St. Petersburg-Clearwater, FL MSA	16,456
Pittsburgh, PA HUD Metro FMR Area	15,739
San Antonio-New Braunfels, TX HUD Metro FMR Area	14,633
San Jose-Sunnyvale-Santa Clara, CA HUD Metro FMR Area	14,307
Hartford-West Hartford-East Hartford, CT HUD Metro FMR Area	12,831
Sacramento-Arden-Arcade-Roseville, CA HUD Metro FMR Area	12,672
Fort Worth-Arlington, TX HUD Metro FMR Area	12,620
Virginia Beach-Norfolk-Newport News, VA-NC HUD Metro FMR Area	12,291
Nassau County-Suffolk County, NY Metro Division	11,593
Bergen-Passaic, NJ HUD Metro FMR Area	11,503
Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Metro Division	10,486
Charlotte-Gastonia-Rock Hill, NC-SC HUD Metro FMR Area	7,951
Monmouth-Ocean, NJ HUD Metro FMR Area	7,811
West Palm Beach-Boca Raton-Delray Beach, FL Metro Division	6,058
Jacksonville, FL HUD Metro FMR Area	5,872
Oxnard-Thousand Oaks-Ventura, CA MSA	5,612
Tacoma-Lakewood, WA Metro Division	5,341
Jackson, MS HUD Metro FMR Area	4,742
Urban Honolulu, HI MSA	4,146
Gary, IN HUD Metro FMR Area	3,305
Colorado Springs, CO HUD Metro FMR Area	2,957
North Port-Bradenton-Sarasota, FL MSA	2,592
Palm Bay-Melbourne-Titusville, FL MSA	2,565

*Voucher Counts as of June 30, 2015—Includes MTW, Excludes PBV.

Appendix B—Initial Regulatory Flexibility Analysis

Initial Regulatory Flexibility Analysis Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs

1. Introduction

The Regulatory Impact Analysis of the proposed Small Area Fair Market Rent (Small Area FMR) rule identifies two types of small entities that would be affected by the rule: Small Public Housing Agencies (PHAs) and small private landlords. The Initial Regulatory Flexibility Analysis (IRFA) furthers the analysis of the impact of the rule on small entities by including more data on the relevant sectors as well as a more rigorous definition of what is a "small" PHA. The analysis of the proposed rule satisfies Section 603 of the Regulatory Flexibility Act. The requirements of the IRFA are listed below.[11]

(a) The agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the **Federal Register** at the time of the publication of general notice of proposed rulemaking for the rule. *This requirement is satisfied by the present IRFA.*

(b) Each initial regulatory flexibility analysis required under this section shall contain—

(1) A description of the reasons why action by the agency is being considered: *This requirement is met by Sections 2.1 and 2.3 of the IRFA. A lengthier discussion can be found in the Regulatory Impact Analysis and the Preamble of the Proposed Rule.*

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule: *This requirement is met by Sections 2.1 and 2.3 of the IRFA. A lengthier discussion can be found in the Regulatory Impact Analysis and the Preamble of the Proposed Rule.*

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply: *This requirement is met by Sections 3.1 and 4.1 of the IRFA.*

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record: *This requirement is met Sections 3.2 and 4.2 of the IRFA.*

(5) An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule: *This requirement is met by Section 7 of the IRFA.*

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities: *This requirement is met by Sections 5 and 6 of the IRFA.*

(2) The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities: *This requirement is met by Sections 5 and 6 of the IRFA.*

(3) The use of performance rather than design standards: *This requirement is met by Sections 5 and 6 of the IRFA.*

(4) An exemption from coverage of the rule, or any part thereof, for such small entities: *This requirement is met by Sections 5 and 6 of the IRFA.*

Before proceeding further, Section 2 of the IRFA provides a brief summary of the main findings from the Regulatory Impact Analysis. The summary is provided for those readers who do not have ready access to the Regulatory Impact Analysis. Some readers may want more details on the anticipated economic effects of the regulation. A wide-ranging discussion can be found in the Regulatory Impact Analysis. Most of the Initial Regulatory Flexibility Analysis is dedicated to a description of the primary small entities affected: Private landlords and Public Housing Authorities (PHAs).

2. Summary of the Regulatory Impact Analysis

The summary of the Regulatory Impact Analysis provides: An overview of the proposed rule, a statement of the objectives of the rule, a justification for the regulatory action, and a brief description of the economic impacts. Readers who are familiar with the Regulatory Impact Analysis may skip to the subsequent sections.

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[11] HUD is not a covered agency, as defined in section 609(d)(2), and so is not required to comply with (d)(1) or (d)(2).

2.1. Overview of Proposed Rule

This proposed rule proposes the use of Small Area Fair Market Rents (Small Area FMRs) in the administration of the Housing Choice Voucher (HCV) program for certain metropolitan areas. HUD is proposing to use Small Area FMRs in place of the current 50th percentile rent to address high levels of voucher concentration. HUD believes that Small Area FMRs gives HCV tenants a more effective means to move into areas of higher opportunity and lower poverty areas by providing them with subsidy adequate to make such areas accessible and to thereby reduce the number of voucher families that reside in areas of high poverty concentration.

HUD proposes to use several criteria for determining which metropolitan areas would best be served by application of Small Area FMRs in the administration of the HCV program. These criteria include a threshold number of vouchers within a metropolitan area, the concentration of current HCV tenants in low-income areas, and the percentage of renter occupied units within the metropolitan area with Small Area FMRs above the payment standard basic range. Public housing agencies (PHAs) operating in designated metropolitan areas would be required to use Small Area FMRs. PHAs not operating in the designated areas would have the option to use Small Area FMRs in administering their HCV programs. Other programs that use FMRs would continue to use area-wide FMRs.

Note to Reader: A more comprehensive summary of the rule can be found in the Regulatory Impact Analysis and the Rule itself.

2.2. Objectives of Rule

This proposed rule, through establishment of Small Area FMRs as a means of setting rents in certain metropolitan areas, is intended to facilitate the Housing Choice Voucher (HCV) program in achieving two program objectives: (1) Increasing the ability of low-income families to find and lease decent and affordable housing; and (2) providing low-income families with access to a broad range of housing opportunities throughout a metropolitan area. HUD's goal in pursuing this rulemaking is to provide HCV tenants with a greater ability to move into areas where jobs, transportation, and educational opportunities exist.

2.3. Justification for Rule

In October 2000, HUD published an interim final rule[12] that set higher (50th percentile as opposed to 40th percentile[13]) metropolitan area Fair Market Rents (FMRs) where program data showed that voucher holders and public housing agencies (PHAs) needed assistance in achieving the two program objectives specified in 2.2 above. Setting the metropolitan FMR higher at the 50th percentile rent was expected to increase the number of neighborhoods affordable with a voucher, thereby aiding the dispersion of voucher holders throughout the FMR area.

Under the 2000 rule, FMR areas set at the higher 50th percentile rents revert to standard (40th percentile) metropolitan FMR status either when voucher holders are no longer considered geographically concentrated by the criteria established by the 2000 rule, which is codified in 24 CFR part 888, or when the voucher program fails to achieve measurable progress toward "deconcentration" within three years. If the program fails to show progress and loses its 50th percentile rent status, reestablishment of rents at the 50th percentile can be reconsidered in three years. Areas that demonstrate progress with deconcentration undergo reconsideration every year.

Many areas have cycled in and out of 50th percentile status (see Appendix of Regulatory Impact Analysis) since the 2000 rule went into effect, suggesting it has not been an effective tool in deconcentrating voucher households in a lasting way. An emerging body of research is confirming this conclusion.[14] The proposed rule therefore would replace the 50th percentile metropolitan FMRs with Small Area FMRs. Small Area FMRs are similar to metropolitan FMRs but set at the more local ZIP code level. Theory, and the early evidence from areas already piloting the Small Area FMRs,[15] suggests that setting FMRs at the ZIP code level will make more units available in higher rent neighborhoods while reducing the overpayment of rents by the program in lower rent neighborhoods.[16] This, in turn, should make the program more cost effective and facilitate a more lasting geographic dispersion of voucher households.

The proposed rule does not treat Small Area FMRs as a temporary policy. Once areas are designated for use of Small Area FMRs and the new payment standards have been implemented, the rule makes no provision for a return to metropolitan FMRs. The 2000 rule was based on the assumption that once the 50th percentile metropolitan FMR is successful in encouraging voucher households to move to a wider range of neighborhoods, rents set at the 50th percentile were no longer needed.

2.4. Summary of Economic Impacts

HUD expects a variety of economic effects stemming from implementation of the proposed rule. Transfers involving vouchers would be the most sizable of those effects. PHAs will face both costs and benefits from the implementation of this rule. Social benefits and costs associated with the rule could be generated by a new settlement pattern among voucher holders. Quantified incremental impacts include an expected transfer of $265 million among participants and $4 million of implementation costs to PHAs. The Regulatory Impact Analysis includes a lengthy description of qualitative impacts as well details concerning the calculation of the quantitative impacts.

3. Landlords Affected

Some owners of rental real estate may experience a minor pecuniary impact (either positive or negative) from the regulation. Some of this economic impact is likely to be passed onto property managers: The *lessors of residential building and dwellings*[17] is the private industry that is most likely to be affected by the regulation. While direct and indirect effects of changing the subsidy design is theoretically possible; it is empirically unlikely.

The following section describes the property management industry. It is important to keep in mind that while many businesses rent to voucher tenants, adverse effects are not expected for reasons described in this section.

3.1. Industry Data: Lessors of Residential Building and Dwellings

The Small Business Administration defines a lessor of residential real estate to be a small business if it earns annual revenues (sales receipts) of less than $27.5 million. In the 2012 Economic Census, the Census counted approximately 50,000 of which approximately 43,000 operated for the entire year of 2012. Our comparisons are made using the full-year data to be more consistent with the definition of what is small (firms operating the entire year).

Of the 42,911 firms operating all year, 42,618 can be considered small firms. Total annual revenue of the industry was $84 billion,[18] compared to $43 billion for small firms. Approximately 300,000 individuals were employed by firms operating all year during the pay period observed in March 2012; 200,000 of them were employed by small firms. Small lessors account for 99 percent of all firms, 51 percent of all revenue, 57 percent of all payroll, and 67 percent of employees hired during the first quarter. The industry is dominated by small firms in numbers of firms and employees, but is roughly equivalent to all large firms in terms of revenue and payroll.

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[12] See **Federal Register** edition of October 2, 2000, at 65 FR 58870.

[13] FMRs are typically set at the 40th percentile in the distribution of rents paid by recent movers into "standard quality" units within an FMR area, generally a metropolitan area or non-metropolitan county. For more information, see *http://www.huduser.gov/portal/datasets/fmr.html.*

[14] Collinson, R. and Ganong, P. (2015, May) The Incidence of Housing Voucher Generosity. Retrieved December 11, 2015 from *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2255799.*

[15] Small Area FMRs are only permitted to be used to set Section 8 Housing Choice Voucher payment standards in the Dallas, TX HUD Metropolitan FMR Area and by PHAs participating in the Small Area FMR Demonstration Program. See *https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html.*

[16] See the Final Regulatory Impact Analysis for a detailed discussion.

[17] This industry (NAICS 531110) comprises establishments primarily engaged in acting as lessors of buildings used as residences or dwellings, such as single-family homes, apartment buildings, and town homes. Included in this industry are owner lessors and establishments renting real estate and then acting as lessors in subleasing it to others. The establishments in this industry may manage the property themselves or have another establishment manage it for them.

[18] American Community Survey data indicate that the lessor industry revenue is approximately 20 percent of aggregate rents. The industry collects twice the average 10 percent commission for property managers. This difference could be explained by: Realtors' commissions, other activities, and lessors owning property and thus collecting the full rent.

LESSORS OF RESIDENTIAL BUILDINGS AND DWELLINGS (NAICS INDUSTRY 531110) OPERATED FOR THE ENTIRE YEAR 2012, UNITED STATES

Firm size by revenue	Firms	Revenue ($1,000)	Payroll ($1,000)	Employees for period including March 12
All firms *	42,911	83,593,387	9,838,805	303,135
Revenue less than $25,000,000	42,618	42,908,437	5,574,606	202,381
Proportion small firms **	99%	51%	57%	67%

* Note that there were 50,664 firms altogether but that 42,911 operated all year. Using the larger base would reduce the proportion of small firms.

** The official size standard of the SBA is $27.5 million. Statistics are not available for this cut-off so we use the closest one leading to a slight underestimate of the proportion "small."

HUD is able to provide information on the number of owners who participate in the housing choice voucher program. Note that counting real estate owners is not equivalent to lessors that operate the property. One would expect there to be many more owners than lessors. Nonetheless, the data provides insight as to the distribution of vouchers. It is evident that the overwhelming proportion of owners rent to very few voucher tenants. Approximately two-thirds of owners who rent to voucher tenants rent to only one voucher tenant household. Many of these are likely owners of single-family homes for whom the rental income is not the primary source of income. Approximately 90 percent rent to no more than 4 voucher tenant households, which could be housed in a large two-story building. Very few owners rent to enough voucher tenants to occupy multiple buildings.

U.S. RESIDENTIAL REAL ESTATE OWNERS RENTING TO VOUCHER TENANT HOUSEHOLDS *

Category of owner with voucher tenant households	Number of owners with voucher tenant households *	Percent of owners with voucher tenant households
1 Voucher	435,653	67.2
2–4 Vouchers	142,925	22.1
5–19 Vouchers	55,206	8.5
20–49 Vouchers	10,773	1.7
50–99 Vouchers	2,564	0.4
100–199 Vouchers	687	0.1
200 or more Vouchers	148	0.0
All	647,956	100.0

* *This table describes voucher tenants but NOT non-voucher tenants. It is likely that many owners rent to additional tenants, making the above table a slight overestimate of the small landlords affected by the rule.*

The data on the distribution of owners by number of vouchers implies that industry structure is not significantly different for vouchers than for other residential rental properties. The tables do not correspond perfectly because one describes property managers and the other property owners. In addition, the table for owners shows information for voucher tenants only and does not include any unassisted tenants.

HUD estimated that 28 percent of all vouchers are likely to be affected by the rule. If the number of lessor firms is proportional to the number of vouchers, then approximately 12,000 firms operating all year round (or 14,000 firms operating at any time) would manage units in Small Area FMR areas. They do not necessarily provide housing for voucher tenants but would be affected by any market externalities engendered by the rule. The median share of voucher holders in a census tract is 3.2 percent. Again, assuming proportionality we expect 400–500 NAICS industry 531110 firms to manage units occupied by voucher tenants in the Small Area FMR areas created by the proposed rule. The number of voucher units managed by any one firm will vary.

3.2. Economic Impacts and Compliance Requirements on Small Landlords

There are two types of possible effects of the rule on property owners and managers. The first is *direct:* An owner (and lessor) who receives income from a voucher tenant may experience a change in rental income without changing the contract or tenant. Consider a low-rent area in which the subsidy will decline. The owner (and lessor) would be held harmless if the tenant chose to make up the difference. However, suppose that the subsidy declined by a critical amount such that the tenant can no longer afford the unit. The owner has two choices: Search for a new tenant who will pay the market rent or lower the rent by enough to maintain the current tenant. The former strategy would be chosen if the housing submarket were characterized by adequate demand. The latter strategy would be chosen if the reduction in rents are offset by the costs of finding a new tenant. Thus, while the owner (and lessor) may lose a particular voucher tenant, they will not lose the rental income from that unit. The rule may generate revenue for lessors of residential building and dwellings if a significant number of moves result. Managing turnover is one of the primary services provided by a lessor to an owner. This would not be a major effect but could serve to counterbalance any minor adverse effects on lessors.

The second type of effect is *indirect* (a pecuniary externality). A reduction (increase) of the voucher subsidy would lower (raise) the demand for housing in that submarket. Even properties without any voucher tenants would be affected by such a market-wide effect. However, a decline in demand would only result if voucher households make up a sufficiently large portion of rental households in a given neighborhood. Market spillovers are expected to be minimal in many areas due to the limited size of the voucher program in relation with the entire housing market. Of the 13,200 Census tracts in the areas affected by the proposed rule, the median share of voucher households is 3.2 percent. Even in areas where the share is larger, the rule does not eliminate the subsidy but reduces it. Small lessors will be disproportionately impacted by market effects only if the units leased by small lessors are disproportionately concentrated in low-rent areas.

The proposed rule does not impose any additional reporting, recordkeeping and other compliance requirements. Compliance and unit standards remain the same.

An additional effect of the rule is that six current 50th percentile areas will revert to

40th percentile FMRs, as the Small Area FMR rule uses different selection criteria than the 50th percentile rule. These areas currently cover 84,000 vouchers. On average, the FY16 40th percentile FMR is $79 lower than the 50th percentile FMR, meaning a *transfer* of $6.6 million is expected through a combination of landlords accepting lower rent, tenants increasing out of pocket rent, or tenants moving to lower cost, less desired units.

3.3. Public Comment in Response To Advance Notice of Proposed Rulemaking Concerning Impact on Housing Providers

Comment: Small Area FMR approach would run the risk that units currently with vouchers would not be renewed in HCV program. HUD received many comments from property owners, landlords and other housing providers that expressed this concern. These comments generally focused on property owners/managers with current voucher tenants, typically within the city of Baltimore, MD. These comments suggested that if HUD were to move to Small Area FMRs, these units would not be renewed in the voucher program because the rents for the units would be too low.

HUD Response. These units would be renewed if the family chooses to remain and the rent is reasonable. HUD's regulation at 24 CFR 982.507 directs that PHAs must determine if the rent to owner is reasonable at time of determining the initial rent to owner or when the FMR decreases by more than 5 percent (this proposed rule proposed to change the standard to 10 percent). Consequently, if after an FMR decrease, if the PHA deems that the rent is reasonable, the unit may be renewed, albeit with the tenant increasing their portion of the rent. Furthermore, HUD believes that the use of Small Area FMRs removes a barrier that tenants currently have in accessing housing units in areas of opportunity; namely, that subsidy levels are not high enough to afford rental units in these high opportunity neighborhoods. HUD further believes that if housing authorities determine that current rents in areas with declining Small Area FMRs are reasonable, tools are in place to address these situations (exception payment standards, reasonable accommodation, etc.)

4. Public Housing Agencies Affected

PHAs operating in metropolitan areas that meet the established Small Area FMR criteria of the proposed rule will be required to use Small Area FMRs in their HCV programs. As of issuance of this proposed rule, there are 31 areas listed that meet these criteria. These areas contain approximately 564,000 (28 percent) of the HCV households nationwide.[19] Of these 564,000 vouchers, 387,000 vouchers are administered by PHAs that may not yet use multiple payment standards.

4.1. Data: Small PHAs

A small PHA is defined by HUD to be one of less than 250 units.[20] Using this definition, approximately half of the PHAs (1,100 out of 2,200) that administer HCVs are considered small. In the 31 metropolitan areas affected by the proposed rule, there are 292 PHAs, of which 80 are small. The Regulatory Flexibility Analysis authorizes an agency to adopt and apply definitions of small, "which are appropriate to the activities of the agency" for each category of small entity.[21] The 250 unit limit is one traditionally used by HUD in data collection as well as by city governments. In addition, it has been shown that PHAs of this size class face greater average costs of administering housing choice vouchers.[22] A greater average cost is an indicator for smaller entities is suggestive evidence of fixed costs of operation. Small PHAs make up 27 percent of the PHAs in affected areas and would manage no more than 4 percent of the vouchers.

4.2. Economic Impacts and Compliance Requirements for PHAs

PHAs administering Small Area FMRs will likely face higher administrative costs. Initial costs would include training employees and setting up new systems. Periodic costs include costs related to payment standard and rent determinations as well any increase in moves and contract rent changes than those operating under one metropolitan FMR. PHAs change their payment standards as the FMR changes. Once the payment standard is established, and the PHA board approves, the PHA creates materials to inform their customers (and landlords) of the new payment standards. Making the transition from one to many payment standards is likely to impose some burden at initial implementation of the Small Area FMR rule.

There are at least two ways that a PHA would respond to the increased complexity of multiple payment standards. First, it could pursue a more labor-intensive solution and ask staff to determine the payment standard manually. This would not be particularly difficult for a small PHA with few payment standards. Small PHAs typically have smaller service areas with fewer ZIP codes and therefore fewer Small Area FMR-based payments standards to determine and administer than do larger PHAs. Another solution is to make an upfront investment to automate the process of subsidy determination. A unit's address is already entered into a PHA's database. All that is needed is a tool that calculates the rental subsidy as a function of the address. HUD has the intention of developing such an application for PHAs and voucher holders tenants. For it to work, PHAs will have to provide data on their payment standard decisions to HUD. Thus, compliance costs of PHAs are expected to rise slightly but not significantly. Because the tool will be developed, tested, and provided by HUD, it is not expected that the cost of implementation will be disproportionate.

A 2015 study[23] reports that, according to a Dallas PHA official, implementation costs of multiple payment standards were minimal at roughly $10 a household. Though it is unclear what this estimate considers, and assuming it can be applied elsewhere, as a rough measure of magnitude this would mean $3.9 million to $5.6 million in implementation costs over the 31 areas designated and 292 PHAs affected by this proposed rule. The more accurate estimate is the lower because it is based on PHAs that do not already use multiple payment standards. Both were considered for completeness. The impact on small entities would be a fraction of this impact. Assuming that all PHAs are affected and that all small PHAs are at the maximum, then the total impact on all small PHAs would be $200,000 (80 × 250 × $10). Such a conservative estimate would reduce any downwards bias in the estimate of the impact stemming from returns to scale.

The Small Area FMR rule will be beneficial to PHAs in some important respects. First, the rule intends to eliminate the possibility that an area will cycle in and out of the 50th percentile FMR as it can currently occur under the 2000 rule. This change is expected to reduce the year-to-year administrative uncertainty and the costs of adjusting the program to changing FMR calculations over time. Second, the proposed rule is also expected to facilitate PHA and regional compliance with consolidated planning and Fair Housing requirements and allow counseling and similar efforts to be more effective.[24] Finally, the use of Small Area FMRs is expected to decrease the costs of rent reasonableness determinations as the payment standards better reflect local rent levels.

4.3. Public Comment in Response to Advance Notice of Proposed Rulemaking Concerning PHA Compliance Burden

Comment: Small Area FMR approach would increase administrative burden. Several commenters expressed concern that Small Area FMRs would increase the administrative burden of operating the voucher program. Commenter stated that this concern is compounded because, as they stated, their administrative fee payments are inadequate to meet administrative costs.

HUD Response: HUD recently released a final report on the costs of running a high performing housing authority [1] and HUD is currently engaged in a proposed rulemaking effort regarding the administrative fee formula. Consequently, this proposed rule does not address the adequacy of administrative fees. HUD has undertaken several steps to minimize the burden of implementing Small Area FMRs. One of these ways is to round Small Area FMRs to the nearest ten dollars to make it easier to arrange the small areas into payment standard groups.

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[19] This number includes areas that have already implemented Small Area FMRs and Moving to Work Agencies, which may not be compelled to adjust their payment standards as a result of the rule. The analysis below considers these exceptions.

[20] For regulatory definitions of small PHAs, see: Deregulation of Small PHAs Final Rule, 24 CFR part 902, 903, and 985.

[21] The RFA standard definition of a "small governmental jurisdiction" is the government of a city, county, town, school district or special district with a population of less than 50,000.

[22] Abt Associates, 2015.

[23] Collinson and Ganong, (2015, May).

[24] Advancing mobility is one of the costliest activities of a PHA.

[1] Housing Choice Voucher Program Administrative Fee Study: Final Report (available at: *http://www.huduser.gov/portal/publications/affhsg/hcv_2015draftfinalreport.html*).

5. Major Policy Alternatives Considered and Rejected

There were several major alternatives to Small Area FMR rule, all of them either less effective or more costly than what was finally proposed. The obvious alternative was to retaining metro level FMRs at either the 40th or 50th percentile. However, an FMR that does not vary geographically within a metropolitan area has not achieved the policy objective of promoting location choice. Even making the subsidy more generous by increasing it from the 40th to 50th percentile has not led to long-term success in encouraging geographic mobility.

More appropriate alternatives concern the implementation of the Small Area FMR by changing the scope of the rule to extend the Small Area FMR to more (or fewer) metropolitan areas. The proposed rule mandates the use of the Small Area FMRs in metropolitan areas meeting specific criteria and makes it voluntary elsewhere. A reasonable alternative to consider would be mandating use of Small Area FMRs everywhere. The disadvantage of such an expansive approach is that it may include metropolitan areas whether one or both of the following is true: (1) There is no problem to be solved (*i.e.,* voucher tenants are not especially concentrated in high-poverty neighborhoods), and/or (2) the Small Area FMR is not a viable solution (*i.e.,* nearly all opportunity areas have Small Area FMRs within the basic range of the metropolitan FMR). The Small Area FMR selection criteria in the proposed rule validate that the HCV population are unevenly distributed before implementing the program. If not, then there is no reason to impose the potential administrative costs of a deconcentration policy. If already deconcentrated, then either there is no friction in the housing market or the PHA has found alternative means of solving this problem. Second, the criteria ensure that the Small Area FMR is a potential solution by qualifying only housing markets with sufficient housing stock in areas with Small Area FMRs above the basic range (more than 110 percent) of the metropolitan FMR. Providing higher rent subsidies for high-rent ZIP codes will have little impact if there is demand but no supply. Thus, the proposed rule is a judicious trade-off between the mobility gains of voucher holders and administrative costs of PHAs.

6. Alternatives Which Minimize Impact on Small Entities

Under the Initial Regulatory Flexibility Analysis, HUD must discuss alternatives that minimize the economic impact on small entities. In order to lessen the burden on PHAs, and specifically small PHAs, HUD has taken, or is committed to taking, several measures in implementing Small Area FMRs designed to facilitate transition to this approach and minimize costs and burdens. Specifically, HUD is pursuing the following strategies to mitigate adverse impacts:

- *Publish Small Area FMRs grouped by overlapping potential payment standards.* Although the proposed rule does not specifically address the format of HUD's publication of Small Area FMRs, in on-line materials HUD will provide a version of Small Area FMRs formatted and organized so as to facilitate compliance by PHAs.
- *Develop a mobile application to automate payment standard determination and significantly reduce administrative costs of implementing the Small Area FMR rule for all parties involved (tenant, landlord, PHA).* As noted above, HUD will be developing such an application for PHAs, voucher holders, and landlords.
- *Allow the rounding of Small Area FMRs to the nearest ten dollars to make it easier to arrange the small areas into payment standard groups.* Although the proposed rule does not specify the calculation methods for Small Area FMR estimates, HUD's practice in the Dallas, TX HUD Metro FMR Area and in the Small Area FMR demonstration sites has been to round Small Area FMR estimates to the nearest $10.00 to make it easier to arrange small areas into payment standard groups. Doing so reduces the number of payment standards PHAs would be required to administer.
- *Consider an exemption for PHAs administering very few vouchers in Small Area FMR areas.* The proposed rule exempts HUD Metropolitan FMR Areas with less than 2,500 HCVs under lease from using Small Area FMRs. HUD is seeking public comment in this proposed rule on allowing small PHAs in Small Area FMR areas to continue to use metropolitan FMRs, particularly if such PHAs' tenants are not concentrated in high poverty neighborhoods.

In addition to the above, the presentation of the information in HUD's proposed revision to its PHA administrative fee formula would also soften any adverse impact by providing additional resources to small PHAs generally.

7. Overlapping Federal Regulations

The Housing Choice Voucher program is the major rental assistance program of the federal government, providing assistance to 2.2 million households. While there are many other government policies aimed at providing affordable housing, the Small Area FMR change in policy will not adversely interact with any one of them. Instead, the rule will make it easier for PHAs to comply with HUD's Affirmatively Furthering Fair Housing rule by providing greater access to areas of opportunity. In other efforts, HUD has cooperated with other federal agencies through the Rental Policy Working Group to identify and eliminate overlap or duplication that increase the cost of providing affordable housing.

8. Conclusion

The majority of lessors of residential real estate and a substantial fraction of PHAs are characterized as small. If there were disproportionate effects on small entities, then a more detailed regulatory flexibility analysis would be merited. However, after an in-depth discussion of the industry structure and impact of the rule, HUD cannot conclude that there is a significant and disproportionate impact on small entities. It is true that many lessors may receive income from voucher tenants but it is not likely that they will be adversely affected once market forces are accounted for. Small PHAs could face an additional administrative burden but HUD has offered solutions to significantly reduce any burden.

[FR Doc. 2016–13939 Filed 6–15–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0233]

RIN 1625–AA00

Safety Zone; Verdigris River Mile Marker 444.5 to 443.5

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone for an annually recurring marine event in the Verdigris River, from Mile Marker (MM) 444.5 to MM 443.5 in Catoosa, Oklahoma. This action is necessary to protect persons and vessels from the potential safety hazards associated with a fireworks display taking place between late June to early July, 2016 and recurring annually thereafter. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless specifically authorized by the Captain of the Port (COTP), Lower Mississippi River or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 27, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0233 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LCDR Krissy Marlin, Sector Lower Mississippi River Waterways Management Division, U.S. Coast Guard; telephone (901) 521–4725, email *Krissy.a.Marlin@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The second annual Liberty Fest is planned to take place on the Verdigris River on July 4th or the first or second weekend before the holiday and is anticipated to continue annually. The Coast Guard established a safety zone for the Liberty Fest fireworks display in 2015 through a temporary final rulemaking. For this year and subsequent years, we propose to establish the safety zone as a permanent annually recurring regulation to safeguard against the hazards associated with a fireworks display on the Verdigris River, near Catoosa, Oklahoma.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231. The purpose of this proposed safety zone is to protect both spectators and participants from the hazards associated with a fireworks display on or over the waterway.

III. Discussion of Proposed Rule

The COTP Lower Mississippi River proposes to establish a safety zone for approximately 30–45 minutes occurring between 9:00 p.m. and 11:00 p.m. on one day during July 4th or the first or second weekend before the holiday, occurring annually. The proposed safety zone would encompass all waters of the Verdigris River from Mile Marker (MM) 444.5 to (MM) 443.5 and would cover the time period necessary to ensure safety on the waterway before, during, and after the display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the time, location and duration of the safety zone. Vessel traffic would be restricted from entering, transiting, or anchoring within a small portion of the Verdigris River for approximately 30–45 minutes during the evening, when vessel transits are less frequent, on one day on July 4th or the first or second weekend before the holiday. Vessels may request permission from the COTP to deviate from the restriction and transit through the safety zone and notifications to the marine community would be made through local notice to mariners (LNM) and broadcast notice to mariners (BNM). Therefore, those operating on the waterway would be able to plan operations around the proposed safety zone and its enforcement times.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a temporary safety zone for approximately 30–45 minutes during the evening on one day on July 4th or the first or second weekend before each year on the Verdigris River from (MM) 444.5 to (MM) 443.5. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1

■ 2. In § 165.801, amend table 6, as proposed to be amended at 81 FR 17635 on March 30, 2016, by adding an entry for line 14 to read as follows:

§ 165.801 Annual fireworks displays and other events in the Eighth Coast Guard District requiring safety zones.

* * * * *

TABLE 6 OF § 165.801—SECTOR LOWER MISSISSIPPI RIVER ANNUAL AND RECURRING SAFETY ZONES

Date	Sponsor/name	Sector lower MS river location	Safety zone
* *	*	* *	* *
14. July 4th or the first or second weekend before.	LibertyFest	Verdigris River, Catoosa, OK.	Regulated Area: Verdigris River mile marker 444.5 to 443.5, Catoosa, OK.

* * * * *

Dated: June 9, 2016.

J.L. Adams,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, Memphis, Tennessee.

[FR Doc. 2016–14034 Filed 6–15–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0124; FRL–9946–37–Region 9]

Approval of California Air Plan Revisions, Eastern Kern Air Pollution Control District and Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Yolo-Solano Air Quality Management District (YSAQMD) and Eastern Kern Air Pollution Control District (EKAPCD) portions of the California State Implementation Plan (SIP). These revisions concern, respectively, the definition of volatile organic compounds (VOCs), and emissions of VOCs from the surface coating operations of wood products. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 18, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2016–0124 at *http://www.regulations.gov,* or email to

Steckel.Andrew@epa.gov. For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should discuss all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Arnold Lazarus, EPA Region IX, (415) 972–3024, *lazarus.arnold@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to the EPA. This proposal addresses the following local rules: EKAPCD Rule 410.9 and YSAQMD Rule 1.1. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 3, 2016.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2016–14097 Filed 6–15–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 160229157–6481–01]

RIN 0648–BF84

Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Gulf of Alaska Trawl Fisheries; Amendment 103

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 103 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). If approved, Amendment 103 and this proposed rule would allow NMFS to reapportion unused Chinook salmon prohibited species catch (PSC) within and among specific trawl sectors in the Central and Western Gulf of Alaska (GOA), based on specific criteria and within specified limits. This proposed rule would not increase the current combined annual PSC limit of 32,500 Chinook salmon that applies to Central and Western GOA trawl sectors under the FMP. This proposed rule would provide for more flexible management of GOA trawl Chinook salmon PSC, increase the likelihood that groundfish resources are more fully harvested, reduce the potential for fishery closures, and maintain the overall Chinook salmon PSC limits in the Central and Western GOA. Amendment 103 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Submit comments on or before July 18, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0023, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0023,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (hereafter "Analysis") prepared for this action; the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (collectively, Amendment 97 Analysis) prepared for Amendment 97 to the FMP; and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (collectively, Amendment 93 Analysis) prepared for Amendment 93 to the FMP are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

An electronic copy of the November 30, 2000, Biological Opinion on the effects of the Alaska groundfish fisheries on Endangered Species Act (ESA)-listed species is available at *http://alaskafisheries.noaa.gov/protectedresources/stellers/plb/default.htm.*

Written comments regarding the approved collection-of-information requirements referenced in this proposed rule may be submitted to NMFS at the above address and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–5806. All currently approved NOAA collections of information may be viewed at *http://www.cio.noaa.gov/services_programs/prasubs.html.*

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the U.S. Exclusive Economic Zone (EEZ) of the GOA under the FMP. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act

(Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The Council has submitted Amendment 103 for review by the Secretary of Commerce, and a notice of availability of the FMP amendment was published in the **Federal Register** on May 26, 2016, (81 FR 33456) with written comments on the FMP amendment invited through July 25, 2016. All relevant written comments received by the end of the comment period, whether specifically directed to the FMP amendment, this proposed rule, or both, will be considered in the approval/disapproval decision for Amendment 103 and addressed in the response to comments in the final decision.

The following sections of the preamble describe (1) the management areas and fisheries affected by this proposed action; (2) the management of Chinook salmon PSC in the GOA trawl fisheries; (3) the rationale for Amendment 103 and this proposed rule; and (4) the provisions of this proposed rule.

Management Areas and Fisheries Affected

This proposed rule would apply to federally-permitted vessels fishing in the Central and Western Reporting Areas of the GOA (referred to in the remainder of the preamble as the Central and Western GOA). The Central and Western Reporting Areas, shown in Figure 3 to 50 CFR part 679, consist of the Central and Western Regulatory Areas in the EEZ (Statistical Areas 620 and 630 correspond to the Central GOA, and Statistical Area 610 corresponds to the Western GOA) and the adjacent State of Alaska (State) waters. The specific boundaries between State waters and the EEZ are provided on the NMFS Alaska Region Web site at *https://alaskafisheries.noaa.gov/sites/default/files/fig3.pdf.* This proposed rule would not apply to federally-permitted vessels fishing in the Eastern Reporting Area of the GOA, which consists of Statistical Areas 640, 649, 650, and 659 in the EEZ and the adjacent State waters.

This proposed rule would apply to federally-permitted trawl vessels fishing for pollock and non-pollock groundfish that are managed under total allowable catch (TAC) limits in Federal waters and under the State's parallel groundfish fisheries in State waters. Parallel groundfish fisheries are fisheries that occur in State waters where the catch of groundfish is debited from the Federal TAC. Parallel groundfish fisheries are opened and closed by the State concurrently with adjacent Federal fisheries. Parallel fisheries are managed by the State under rules similar to those that apply in the Federal fisheries. The parallel fisheries that would be affected by this action include the GOA State trawl fisheries for groundfish species that occur in State waters in the Central and Western GOA. Additional detail on State parallel fisheries is provided in Section 1.3 of the Analysis.

In the Central and Western GOA, trawl vessels target multiple groundfish species and are categorized by whether they participate in the directed fishery (*i.e.,* targeted) for pollock or other "non-pollock" species. Section 679.2 defines the term directed fishing. Non-pollock species include arrowtooth flounder, deep-water flatfish, flathead sole, Pacific cod, rex sole, rockfish, sablefish, shallow-water flatfish, and other groundfish species. Many of the non-pollock trawl vessels catch and retain multiple groundfish species in a single fishing trip. Section 3.4.2 of the Analysis provides additional detail on the pollock and non-pollock trawl fisheries in the Central and Western GOA.

Section 303(a) of the Magnuson-Stevens Act, the FMP, and regulations at 50 CFR 679.20(c) require that the Council recommend and NMFS specify an overfishing level (OFL), an acceptable biological catch (ABC), and a total allowable catch (TAC) for each stock or stock complex (*i.e.,* each species or species group) of groundfish on an annual basis. The OFL is the level above which overfishing is occurring for a species. The ABC is the level of a species's annual catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty. The ABC is set below the OFL. The TAC is the annual catch target for a species, derived from the ABC by considering social and economic factors and management uncertainty. The TAC must be set lower than or equal to the ABC. The TACs for some species are subject to further apportionment on a seasonal basis and among vessels using specific types of gear in the GOA (see regulations at § 679.20(a)). NMFS closes directed fisheries when a TAC or seasonal apportionment of TAC is reached, and restricts fishing in other fisheries that may incidentally take a species or species group approaching its OFL.

The final 2016 and 2017 harvest specifications for the GOA (81 FR 14740, March 18, 2016) establish the current TAC amounts and apportionments of pollock and other groundfish fisheries. Only catcher vessels (CVs) are authorized to participate in the directed fishery for pollock (see § 679.20(a)(6)(i)). Pollock in the Central and Western GOA is allocated entirely to CVs, and trawl CVs fish for these allocations. This proposed rule defines the Central and Western GOA pollock trawl CV fisheries as the Central GOA and Western GOA pollock sectors.

The non-pollock fisheries in the Central and Western GOA are harvested by vessels using trawl and non-trawl gear (*i.e.,* hook-and-line, jig, and pot gear). This proposed rule categorizes the non-pollock trawl fisheries into three distinct sectors: The trawl catcher/processor (C/P) sector; the Rockfish Program catcher vessel (CV) sector; and the non-Rockfish Program CV sector.

The trawl C/P sector includes trawl C/Ps that participate in a range of non-pollock groundfish fisheries in the Central and Western GOA such as arrowtooth flounder, deep-water flatfish, flathead sole, rex sole, rockfish and sablefish.

The Rockfish Program CV sector includes any CV fishing for groundfish, other than pollock, with trawl gear in the Western or Central GOA and operating under the authority of a Central GOA Rockfish Program cooperative quota permit. The Central GOA Rockfish Program is a limited access privilege program that authorizes vessels to fish for a variety of rockfish species, Pacific cod, and sablefish in the Central GOA. Additional detail on the Central GOA Rockfish Program and the Rockfish Program CV sector is provided in Section 1.1 of the Analysis, and the final rule implementing the Central GOA Rockfish Program (76 FR 81248, December 27, 2011).

The non-Rockfish Program CV sector is defined as any catcher vessel fishing for groundfish, other than pollock, with trawl gear in the Western or Central reporting area of the GOA and not operating under the authority of a Central GOA Rockfish Program CQ permit assigned to the catcher vessel sector.

Section 3.4.2.1 of the Analysis describes the vessels participating in the five sectors (Central GOA pollock, Western GOA pollock, trawl C/P, Rockfish CV, and Non-Rockfish Program CV) in the Central and Western GOA.

Management of Chinook Salmon PSC Limits in the GOA Trawl Fisheries

The Council designated Pacific salmon and several other species (Pacific halibut Pacific herring, steelhead trout, king crab, and Tanner crab) as prohibited species in the Gulf of Alaska (Section 3.6.1 of the FMP).

Prohibited species catch are species taken incidentally in the groundfish trawl fisheries and designated as "prohibited species" because they are targets of other, fully utilized domestic fisheries. The Council has recommended and NMFS has implemented various measures to control the catch of such prohibited species. Prohibited species catch incidentally caught while directed fishing for groundfish in GOA may not be sold or kept for personal use and must be discarded with a minimum of injury (see § 679.21(b)(2)). A limited exception to this discard requirement for PSC is provided for donations of halibut and salmon made under the Prohibited Species Donation program (see § 679.26). For purposes of PSC management, Pacific salmon are divided into Chinook salmon and non-Chinook salmon.

Chinook salmon is a culturally and economically valuable species that is fully allocated and managed by the State of Alaska and the federal government. Sections 3.6 and 3.7 of the Analysis summarize salmon fishery management and describe the importance of the commercial, recreational, and subsistence Chinook salmon fisheries. The Council has recommended and NMFS has established management measures to constrain Chinook salmon PSC in the GOA groundfish fisheries. Most of the measures apply to the Central and Western GOA groundfish trawl fisheries because most of the Chinook salmon PSC in the GOA occurs in those fisheries. Amendments 93 and 97 to the FMP are the two most relevant measures. The following section describes these two amendments and their implementing regulations in greater detail.

Amendments 93 and 97: PSC Limits in the Pollock and Non-Pollock Trawl Fisheries

In August 2012, NMFS implemented Amendment 93 to establish Chinook salmon PSC limits for the directed pollock trawl fisheries in the Central GOA and Western GOA (77 FR 42629, July 20, 2012). Amendment 93 established an annual Chinook salmon PSC limit for the directed pollock fishery in the Western GOA (*i.e.*, the Western GOA pollock sector) of 6,684 Chinook salmon, and an annual Chinook salmon PSC limit for the directed pollock fishery in the Central GOA (*i.e.*, the Central GOA pollock sector) of 18,316 Chinook salmon. For the Central and Western GOA pollock sectors, the combined annual Chinook salmon PSC limit is 25,000 Chinook salmon.

Once the PSC limit is reached in the Central GOA pollock sector or Western GOA pollock sector, NMFS closes directed pollock fishing for that particular sector. Amendment 93 is described in more detail in the final rule implementing Amendment 93 (77 FR 42629, July 20, 2012). The Regional Administrator of NMFS is the person authorized to close a groundfish sector or fishery. For simplicity, this preamble uses the term "NMFS" to refer to actions that may be undertaken by the Alaska Regional Administrator.

In January 2015, NMFS implemented Amendment 97 to establish Chinook salmon PSC limits for the non-pollock trawl fisheries in the Central and Western GOA (79 FR 71350, December 2, 2014). Amendment 97 included a long-term average annual Chinook salmon PSC limit of 7,500 Chinook salmon allocated among three non-pollock trawl sectors: (1) The Trawl C/P sector; (2) the Rockfish Program CV sector; and (3) the Non-Rockfish Program CV sector. Chinook salmon PSC use and allocations in each of these non-pollock sectors are described in greater detail in Section 4.4 of the Amendment 97 Analysis and in the final rule implementing Amendment 97 (79 FR 71350, December 2, 2014).

Amendment 97 divided the 7,500 non-pollock Chinook salmon PSC limit into 3,600 Chinook salmon for the Trawl C/P sector, 1,200 Chinook salmon for the Rockfish Program CV sector, and 2,700 Chinook salmon for the Non-Rockfish Program CV sector. If a sector reaches or is projected to reach its Chinook salmon PSC limit, NMFS will close directed fishing for all non-pollock groundfish species by vessels in that sector for the remainder of the calendar year. The rationale for the Chinook salmon PSC limits selected for each of the three sectors is described in detail in the proposed and final rules implementing Amendment 97 (respectively, 79 FR 35971, June 25, 2014; 79 FR 71350, December 2, 2014).

The Trawl C/P sector in the Central and Western GOA is the only trawl sector under Amendment 97 that has its annual Chinook salmon PSC limit (3,600 Chinook salmon) divided into a seasonal PSC apportionment (see § 679.21(i)(3)(ii)(A)). Prior to June 1 of each year, the Trawl C/P sector is prohibited from catching more than 2,376 Chinook salmon when the sector's annual PSC limit is set at 3,600 PSC, and 2,693 Chinook salmon when its annual PSC limit is set at 4,080 Chinook salmon (due to a carry-over from the incentive buffer, described below). The Chinook salmon seasonal PSC limit helps the Trawl C/P sector participate in directed fisheries at different times of the year and not exceed its annual Chinook salmon PSC limit.

Amendment 97 also implemented an incentive buffer to allow the Trawl C/P sector and Non-Rockfish Program CV sector to access additional PSC if a previous year's Chinook salmon PSC did not exceed a threshold standard. The incentive buffer allows the annual Chinook salmon PSC limit for the Trawl C/P and Non-Rockfish Program CV sectors to vary depending on the amount of Chinook salmon PSC taken by those sectors in the previous year. For example, if the Non-Rockfish Program CV sector maintains an annual PSC amount equal to or less than 2,340 in one year, that sector would receive up to 3,060 Chinook salmon as its PSC limit in the following year. This feature allows for variability in Chinook salmon PSC levels, while providing an incentive to minimize PSC. The final rule implementing Amendment 97 describes the incentive buffer in greater detail (79 FR 71350, December 2, 2014).

Many of the trawl CVs operating under Amendment 97 are eligible to participate in the Central GOA Rockfish Program (76 FR 81248, December 27, 2011). Catch of Chinook salmon PSC by the Rockfish Program CV sector is subtracted from the Chinook salmon PSC limit of 1,200 fish when a vessel is operating under the authority of a Rockfish Program Cooperative Quota permit (see regulations at § 679.5(r)(8)).

The Non-Rockfish Program CV sector is composed of non-pollock trawl CVs that are authorized to fish for groundfish in the GOA and that are not fishing under the authority of a Rockfish Program Cooperative Quota Permit. This sector fishes primarily for Pacific cod in the Central and Western GOA and for arrowtooth flounder, deep-water flatfish, flathead sole, rex sole, and shallow-water flatfish in the Central GOA.

Under Amendment 97, NMFS is required to reapportion all the Rockfish Program CV sector's unused Chinook salmon PSC in excess of 150 Chinook salmon to the Non-Rockfish Program CV sector on October 1 of each year, and all remaining unused Chinook salmon PSC to the Non-Rockfish Program CV sector on November 15 of each year. However, under existing regulations, NMFS is not authorized to reapportion the GOA Chinook salmon PSC limit among the Trawl C/P sector and any of the CV trawl sectors.

Rationale for Amendments 93 and 97

The Council recommended, and NMFS implemented, Amendments 93 and 97 to meet a variety of policy objectives. The two policy objectives most applicable to this proposed rule are to minimize Chinook salmon bycatch to the extent practicable while allowing the pollock fishery to harvest its TAC in the groundfish fisheries; and to avoid exceeding the annual Chinook salmon threshold of 40,000 that was identified in the incidental take statement accompanying the November 30, 2000, Biological Opinion on the effects of the Alaska groundfish fisheries on Endangered Species Act (ESA)-listed salmon of the Pacific Northwest (see **ADDRESSES**).

The Council recommended, and NMFS implemented, Amendments 93 and 97 after analyzing a range of alternatives that considered different Chinook salmon PSC limits and methods for apportioning Chinook salmon PSC limits. The analyses for Amendments 93 and 97, and the final rules implementing them (respectively, 77 FR 42629, July 20, 2012; 79 FR 71350, December 2, 2014) describe the alternatives considered and the rationale for selecting the specific Chinook salmon PSC limits and apportionments. The two most relevant factors considered by the Council and NMFS are briefly summarized here.

First, the Council and NMFS considered the importance of equity among user groups in the Central and Western GOA pollock and non-pollock trawl fisheries and the needs of Chinook salmon users. The Chinook salmon resource is of value to many stakeholders, including commercial, recreational, and subsistence user groups, and it is a resource that is currently fully utilized. The Council and NMFS implemented Chinook salmon PSC limits that would prevent harvest of Chinook salmon in excess of the current combined annual PSC limit of 32,500 fish.

Second, the Council recommended and NMFS implemented Chinook salmon PSC limits that reflected the long-term average annual use of Chinook salmon PSC in the pollock and non-pollock fisheries. However, the Council and NMFS recognized that in some years, these Chinook salmon PSC limits could constrain groundfish harvests and impose costs on pollock and non-pollock trawl fishery participants. The Council and NMFS selected Chinook salmon PSC limits that reflect the long-term average use of Chinook salmon PSC as a trade-off between minimizing Chinook salmon and the potential for forgoing pollock and non-pollock catch.

Emergency Rule

Amendment 97 was implemented beginning on January 1, 2015. Under Amendment 97, NMFS established an annual Chinook salmon PSC limit of 2,700 Chinook salmon for the Non-Rockfish Program CV sector. On May 3, 2015, NMFS closed all directed fishing for groundfish by the Non-Rockfish Program CV sector after determining that the sector had exceeded its annual PSC limit of 2,700 Chinook salmon. The Non-Rockfish Program CV sector's use of Chinook salmon in the first few months of 2015 was significantly greater than expected based on the historical data available to the Council when it established this sector's Chinook salmon PSC limit under Amendment 97. Due to the directed fishing closure, significant amounts of non-pollock groundfish remained unharvested by the Non-Rockfish Program CV sector, resulting in significant negative economic effects on fishermen, shoreside processors, stationary floating processors, and communities that participate in this sector.

On August 10, 2015, NMFS implemented an emergency rule (see Analysis, Section 3.4.1.5) that provided the Non-Rockfish Program CV sector with an additional PSC limit of up to 1,600 Chinook salmon (80 CFR 47864, August 10, 2015). This Chinook salmon PSC limit, separate and distinct from the sector-based PSC limit of 2,700 established under Amendment 97, was anticipated to allow this sector to prosecute the Pacific cod and flatfish fisheries in the fall of 2015. The emergency rule expired on December 31, 2015.

The emergency rule re-opened fishing for the Non-Rockfish Program CV sector while continuing to limit the sector's total amount of Chinook salmon PSC. When the emergency rule expired, the sector had used only 4 of the additional 1,600 Chinook salmon PSC limit authorized under the emergency rule.

Rationale for Amendment 103 and This Proposed Rule

In June 2015, after recommending adoption of the emergency rule to provide an immediate increase of 1,600 Chinook salmon PSC to the Non-Rockfish Program CV sector, the Council analyzed alternatives to provide for more flexible use of Chinook salmon PSC limits established under Amendments 93 and 97. Under Amendments 93 and 97, a Chinook salmon PSC limit assigned to a pollock or non-pollock sector applies only to that sector. Existing regulations generally do not authorize NMFS to reapportion unused amounts of Chinook salmon PSC limits among the five pollock and non-pollock sectors. This proposed rule would allow NMFS to reapportion a limited amount of unused Chinook salmon PSC from the Rockfish Program CV sector to the non-Rockfish Program CV sector late in the year. Based on previous experience with reapportioning directed fishery allocations and various PSC species (*e.g.*, halibut), the Council determined that fishery closures could be avoided or limited by authorizing NMFS to use inseason management actions to reapportion unused amounts of Chinook salmon PSC among the pollock and non-pollock sectors.

In December 2015, the Council recommended Amendment 103 to the FMP, which would allow NMFS to reapportion unused Chinook salmon PSC limits among the GOA pollock and non-pollock sectors established by Amendments 93 and 97. This proposed rule could prevent or limit fishery closures, such as the May 2015 closure of the Non-Rockfish Program CV sector, while maintaining the current combined annual limit of 32,500 Chinook salmon PSC. The Council determined that increasing the opportunities and flexibility for NMFS to execute inseason reapportionments of Chinook salmon PSC limits could achieve several goals without the need for revising the PSC limits established under Amendments 93 and 97.

The Council determined and NMFS agrees that this proposed rule to implement Amendment 103 would not increase the current combined annual Chinook salmon PSC limit of 32,500 Chinook salmon established for the Central and Western GOA under Amendments 93 and 97. It would increase the likelihood that groundfish resources are more fully harvested, and it would reduce the occurrence of fishery closures and resulting adverse socioeconomic impacts on harvesters, processors, and communities.

As highlighted in the Council's purpose and need statement, this action should (1) improve NMFS' inseason flexibility for reapportioning Chinook salmon PSC and minimize closures in the GOA, (2) be consistent with goals of Amendments 93 and 97 and maintain current PSC limits, (3) not exceed the incidental take threshold for ESA-listed Chinook salmon, and (4) balance competing social and economic interests.

Improve NMFS Inseason Flexibility for Reapportioning Chinook Salmon PSC and Minimize Closures

One goal of this proposed rule is to provide greater flexibility to reapportion GOA trawl Chinook salmon PSC limits during years of high or unusual Chinook salmon PSC without revising the individual sector PSC limits that are currently set in regulation. For example, Chinook salmon PSC could be reapportioned from the Central GOA pollock trawl sector to the non-pollock trawl CV sector after NMFS has determined that the remaining amount of the Central GOA pollock trawl sector's PSC limit is greater than the amount projected to be necessary to harvest the pollock TAC for the remainder of the year. In the same manner, this proposed rule would allow inseason reapportionment of Chinook salmon PSC from the non-pollock trawl fisheries to the pollock fisheries or among the three non-pollock trawl sectors.

Allowing Chinook salmon PSC limits to be reapportioned among sectors would provide NMFS with additional flexibility to allow the catch of available TAC, and in some circumstances would likely prevent or delay fishery closures or allow a closed fishery to reopen. Section 3.4.1.3.1 of the Analysis provides examples of how reapportioning unused Chinook salmon PSC among various sectors could have provided additional harvest opportunities in various sectors without exceeding the overall Chinook salmon PSC limits established under Amendments 93 and 97. Section 3.4.1.3.1 shows that, based on observed Chinook salmon PSC in 2015, the Non-Rockfish Program CV sector likely would have remained open after May 4, 2015, if NMFS had had the authority to reapportion unused Chinook salmon PSC.

Be Consistent With Goals of Amendments 93 and 97 and Maintain Current PSC Limits

In considering this proposed rule, the Council determined and NMFS agrees that the Chinook salmon PSC limits established in Amendments 93 and 97 continue to be the most practicable Chinook salmon PSC limits for the Central and Western GOA trawl fisheries. The Chinook PSC limits established under Amendments 93 and 97 intentionally impose the risk of closure on a sector that approaches or exceeds its Chinook salmon PSC limit.

Based on historical Chinook salmon PSC use in the Central and Western GOA trawl fisheries and the variability in Chinook salmon PSC in recent years since the implementation of Amendment 97, a certain level of risk remains under this proposed rule that Chinook salmon PSC limits could close fisheries. After reviewing the historical Chinook salmon PSC data (see Section 3.4.1.3.2 of the Analysis), the Council determined and NMFS agrees that, in most years, the Central and Western GOA pollock sectors will fully harvest the available TACs under the Chinook salmon PSC limits established under Amendment 93.

Of the five sectors covered by Amendments 93 and 97, the three non-pollock sectors are more likely to be constrained by their Chinook salmon PSC limits because Amendment 97 set those three sectors' Chinook salmon PSC limits close to their historical use levels (see the final rule for implementing Amendment 97 (79 FR 71350, December 2, 2014)).

As with Amendments 93 and 97, this proposed rule is intended to minimize bycatch to the extent practicable. Several provisions of this proposed rule are designed to achieve that objective. For example, this proposed rule establishes a "cap" on the amount of reapportioned Chinook salmon PSC limit that a sector may receive in a single year. By capping the amount of PSC that can be received by a sector through a reapportionment, this proposed rule balances the goal of flexibility to reapportion Chinook salmon PSC limits with the goal to minimize PSC, consistent with National Standard 9.

Section 3.8 of the Analysis identifies the potential for small increases in the annual Chinook salmon PSC under this proposed rule relative to the status quo due to the increased flexibility to reapportion Chinook salmon PSC limits. The Council and NMFS concluded that the small scale of the potential PSC increases and effective PSC limits are consistent with the goals of Amendments 93 and 97. During years in which a CV sector is constrained by Chinook salmon PSC and receives a Chinook salmon PSC reapportionment, the flexibility provided by this proposed rule could increase the aggregate amount of Chinook salmon that are taken across all GOA trawl fisheries.

Section 3.8 of the Analysis estimates that the most likely scenario for reapportionment under this proposed rule is from one or both of the pollock sectors to either the Rockfish CV sector or the Non-Rockfish CV sector. Because this proposed rule would cap the maximum amount that would be reapportioned, as described later in this preamble, the most likely scenario is that NMFS would reapportion no more than 2,000 Chinook salmon in any year, or approximately 6 percent of the current combined 32,500 Chinook salmon PSC limit for the Central and Western GOA trawl fisheries. The Council explained that while this proposed rule would allow for slightly higher Chinook PSC, that amount of PSC would still be within the combined annual 32,500 Chinook salmon PSC limit established by Amendments 93 and 97. The proposed rule therefore appropriately balances the objectives of the National Standards. See discussion below.

While the provisions of this proposed rule would likely result in some additional Chinook salmon PSC reapportionment, NMFS does not expect that this proposed rule would provide incentives for participants to increase PSC use or ignore PSC limits established by Amendments 93 and 97. Three factors explain why sectors are unlikely to drastically reduce their effort to avoid Chinook salmon as a result of this proposed rule (see Analysis, Section 3.8). First, the reapportionment provisions in this proposed rule would not guarantee that Chinook salmon PSC limit reapportionments would be available in a given year. Chinook salmon PSC encounter levels are highly variable across years. The years in which a sector reaches its PSC limit are likely to be years in which other GOA trawl sectors are experiencing similarly high Chinook salmon PSC levels, thus reducing the availability of reapportionments to GOA trawl sectors. Second, NMFS inseason managers would not necessarily make an immediate reapportionment to a closed sector. Although this proposed rule could prevent a closure for a sector during an entire year, the possibility exists that fishing opportunities might be forgone for at least part of a year. Third, most reapportionment of Chinook salmon PSC limits are likely to be from the Central or Western GOA pollock sectors, and most of the Chinook salmon PSC use in those two sectors occurs later in the year. NMFS likely would not make large PSC limit reapportionments from either of these pollock sectors to a non-pollock sector until NMFS is able to reasonably project that a pollock sector's PSC use will be below its PSC limit for the remainder of the year.

The Council determined, and NMFS agrees, that authorizing NMFS to reapportion Chinook salmon PSC limits from one sector to another will not increase the likelihood of exceeding the current combined annual Chinook salmon PSC amount of 32,500. The individual PSC limits for the pollock sectors and non-pollock trawl sectors are unchanged by this action. As described above under the section titled "Management of PSC Limits in the GOA," NMFS would have sufficient and timely PSC data to close these fisheries and avoid exceeding the current combined annual amount of 32,500 Chinook salmon PSC.

ESA Incidental Take Threshold for Chinook Salmon

Under this proposed rule, the trawl fisheries would continue to avoid exceeding the annual Chinook salmon ESA threshold of 40,000 Chinook salmon that was identified in the incidental take statement accompanying the November 30, 2000, Biological Opinion (see **ADDRESSES**). Establishing a limit on the amount of Chinook salmon PSC that may be taken on an annual basis in the pollock and non-pollock trawl fisheries in the Central and Western GOA would accomplish that goal. This proposed rule would continue to limit the combined annual Chinook salmon PSC in the Central and Western GOA trawl fisheries to 32,500 Chinook salmon, much less than the 40,000 Chinook salmon threshold.

Balance Competing Social and Economic Interests: National Standards

The Council concluded and NMFS agrees that this proposed rule could mitigate the potential for Chinook salmon PSC limits implemented under Amendments 93 and 97 to cause adverse social and economic effects of an early fishery closure while continuing to minimize Chinook salmon PSC to the extent practicable. Reapportioning Chinook salmon PSC limits to a sector to avoid a fishing closure or to reopen a fishery may prevent negative impacts to harvesters, processors, and GOA coastal communities that depend on that groundfish resource.

Section 3.4.1.5 of the Analysis provides an example of the forgone revenue to harvesters and processors from the Chinook salmon PSC limit closure for the non-Rockfish Program CV sector that would likely have been avoided under this proposed rule (see Analysis, Section 3.4.1.5). Based on average groundfish catch by the sector from 2010 through 2014, reapportionment of unused Chinook salmon PSC limits to the Non-Rockfish Program CV sector before May 2015 could have avoided the loss of approximately $4.6 million in gross revenues to GOA trawl harvesters and $11.3 million in gross revenues to processers. The reapportionment of Chinook salmon PSC limits to that sector could have also avoided adverse impacts to employees and businesses in the Kodiak Borough and City of Kodiak where most of the non-Rockfish Program CV sector catch is landed and processed.

NMFS determined that Amendments 93 and 97 were fully consistent with all 10 of the National Standards included in the Magnuson-Stevens Act (18 U.S.C. 1801(a)). In recommending this proposed rule, the Council and NMFS concluded that providing additional authority to NMFS to reapportion Chinook salmon PSC limits in the pollock and non-pollock trawl sectors is consistent with Amendments 93 and 97 and the National Standards, and it appropriately balances the National Standards' competing interests. The Council determined and NMFS agrees that reapportioning Chinook salmon PSC could benefit GOA trawl vessel operators, crew members, processors, support industries, and communities that are dependent on those fisheries, without modifying the overall PSC limits that were established to protect the Chinook salmon resource.

Of particular importance to this proposed rule are National Standards 1, 5, 6, 8, and 9 (see Analysis, Section 5.1). Section 5.1 of the Analysis describes the consistency of this proposed rule with all National Standards. This proposed rule increases the likelihood that groundfish TACs will be achieved, allows for management actions to adjust to the variation in Chinook salmon PSC rates among sectors within a year, and decreases the likelihood that harvesters, processors, and communities are adversely affected by fishery closures due to Chinook salmon PSC limits. Those objectives are consistent with National Standards 1, 5, 6, 8, and 9.

The Council determined and NMFS agrees that this action should not revise observer deployment, coverage, or observer sampling estimation methods in the Central and Western GOA pollock and non-pollock trawl fisheries. NMFS' catch, bycatch, and PSC estimation methods are described in more detail in Section 3.3 of the Analysis.

Provisions of This Proposed Rule

The Council and NMFS considered a range of options that would limit the amount of unused Chinook salmon PSC that could be reapportioned to a sector and the number of sectors that could receive an apportionment (see Sections 3.5, 3.6, and 3.7 of the Analysis). This analysis included options that were considered by the Council, but not adopted. The remainder of this preamble describes only those provisions that would be implemented by this proposed rule.

Before making any reapportionment, this proposed rule specifies that NMFS would first project the amount of Chinook salmon PSC that would be unused by a sector during the remainder of the fishing year. Section 3.4.1.4 of the Analysis describes some of the factors that NMFS would consider in making its projections of Chinook salmon PSC use. Proposed regulations at § 679.21(h)(5)(iii) direct NMFS to publish any reapportionment of unused Chinook salmon PSC limits in the **Federal Register**.

The following paragraphs describe: (1) The sectors that can receive a reapportionment of unused Chinook salmon PSC; (2) the amount of unused Chinook salmon PSC that can be reapportioned to a sector; and (3) non-substantive revisions to existing Chinook salmon PSC regulations to improve clarity.

This proposed rule would authorize NMFS to reapportion unused Chinook salmon PSC from any of the five pollock or non-pollock sectors to any other sector, except the Trawl C/P sector. The Council recommended and NMFS proposes excluding the Trawl C/P sector because data on historic PSC use indicates that the Trawl C/P sector is not likely to exceed its current Amendment 97 PSC limit (Section 3.8 of the Analysis). In addition, the Trawl C/P sector is eligible to earn and carry forward additional Chinook salmon PSC by qualifying for the Amendment 97 incentive buffer described earlier in this preamble (see Section 3.8 of the Analysis).

This proposed rule would limit, or "cap" the maximum amount of unused Chinook salmon PSC that a sector could receive on an annual basis. Specifically, a reapportioned amount cannot be greater than 50 percent of the Chinook salmon PSC limit initially assigned for that sector under either Amendment 93 or Amendment 97. For example, Amendment 97 initially assigned a PSC limit of 1,200 Chinook salmon to the Rockfish Program CV sector. Therefore, under this proposed rule, NMFS could not reapportion more than 600 unused Chinook salmon PSC from another sector to the Rockfish Program CV sector.

Section 679.21(h)(5)(iv)(A) through (D) of the proposed regulations specifies that the amount of unused Chinook salmon PSC limits reapportioned to an eligible sector may not exceed the following amounts:

- 3,342 Chinook salmon to the Western GOA pollock sector;

- 9,158 Chinook salmon to the Central GOA pollock sector;
- 600 Chinook salmon to the Rockfish Program CV sector; or
- 1,350 Chinook salmon to the Non-Rockfish Program CV sector

The Council determined and NMFS believes that these caps on the reapportionment will allow NMFS to reapportion Chinook salmon PSC when needed and justified by the circumstances.

In considering the selection of the 50 percent PSC reapportionment cap—as opposed to lower percentages that were considered—the Council and NMFS considered the difficulty, if not impossibility, of identifying the precise minimum amount of Chinook salmon PSC that each sector would need to keep operating and supporting its dependent stakeholders in all future years. The Council and NMFS concluded that selecting a smaller percentage (thus allowing for a smaller reapportionment) could preclude the reapportionment of sufficient amounts of Chinook salmon PSC to avoid fishery closures, particularly for sectors such as the Rockfish CV Sector that have small initial Chinook salmon PSC limits (See Analysis, Section 3.8).

This proposed rule would modify the existing reapportionment of Chinook salmon PSC limits from the Rockfish Program CV sector to the non-pollock Non-Rockfish Program CV sector on October 1. The current regulation at § 679.21(i)(4) states that the reapportionment of all but 150 of the unused Chinook salmon PSC limit remaining in the Rockfish Program CV sector's annual limit of 1,200 fish must be reapportioned to the non-Rockfish Program CV sector on October 1.

The proposed regulations at § 679.21(h)(5)(i) provide NMFS with the discretion to reapportion Chinook salmon PSC from the Rockfish Program CV sector to the Non-Rockfish Program CV sector on October 1 with one exception: NMFS cannot reapportion an amount of Chinook salmon PSC that would leave a remaining balance of less than 150 Chinook salmon PSC as of October 1. The removal of the requirement that NMFS reapportion all but 150 PSC from the Rockfish Program CV sector to the Non-Rockfish Program Sector on October 1 is consistent with the overall intent of this proposed rule (See Section 2.1 of the Analysis) because the Rockfish Program CV sector may require more than 150 Chinook salmon PSC after October 1 in future years if harvesting patterns change. Section 3.4.1.3.3 of the Analysis notes that most of the vessels participating in the Rockfish Program CV sector also prosecute late-year non-pollock fisheries (Pacific cod and flatfish). Providing additional management flexibility in the amount of Chinook salmon reapportioned to the Non-Rockfish CV sector on October 1 decreases the likelihood that participants would have to forgo catch in one non-pollock sector in order to participate in another sector.

The proposed regulations at § 679.21(h)(5)(ii) provide NMFS with the discretion to reapportion all unused Chinook salmon PSC limit from the Rockfish Program CV sector to the non-pollock Non-Rockfish Program CV sector on November 15 of each year but not to exceed 50 percent of the receiving sector's initial allocation. This additional flexibility is consistent with the overall intent of this proposed rule (See Section 2.1 of the Analysis) because the Rockfish Program CV sector may continue to need some Chinook salmon PSC limit after November 15 to prosecute late-year non-pollock fisheries. Providing additional management flexibility in the amount of Chinook salmon reapportioned the Non-Rockfish CV sector on November 15 of each year decreases the likelihood that participants would have to forgo catch in one non-pollock sector in order to participate in another sector.

This proposed rule would consolidate the regulations for Chinook salmon PSC limits in the GOA pollock and non-pollock trawl fisheries currently found at § 679.21(h) and (i) into § 679.21(h). The Chinook salmon PSC regulations for the GOA pollock fishery are currently found at § 679.21(h), and the Chinook salmon PSC regulations for the GOA non-pollock fisheries are currently found at § 679.21(i). This proposed rule would consolidate under § 679.21(h) all the current Chinook salmon PSC limits and management measures as well as the proposed regulations to authorize the reapportionment of Chinook salmon PSC limits among the GOA pollock and non-pollock trawl sectors. Consolidation of the Chinook salmon PSC limit regulations under § 679.21(h) would not result in any technical or substantive changes to the existing procedures, policies, and requirements that were implemented under Amendments 93 and 97. Consolidation would allow for more efficient, clear, and concise regulations for the entities regulated by this proposed rule. NMFS is not taking public comment on those policies and procedures previously implemented through Amendments 93 and 97.

Classification

Pursuant to sections 304(b) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 103, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of this proposed rule, why it is being considered, and the legal basis for this proposed rule are contained earlier in the preamble to this proposed rule and are not repeated here. A copy of the IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of the applicable size standard for all its affiliated operations worldwide. Fishing vessels are considered small entities if their total annual gross receipts, from all their activities combined, are less than $20.5 million (see Analysis, Section 4).

The entities directly regulated by this proposed rule are those federally permitted or licensed entities that participate in harvesting groundfish from the Federal or State-managed parallel pollock and non-pollock trawl fisheries of the Central and Western GOA. Fishing vessels are considered small entities if their total annual gross receipts, from all their activities combined, are less than $20.5 million. Based on 2013 data, the IRFA identified 32 CVs that are defined as small entities. The IRFA also identified one trawl C/P that is defined as a small entity. Therefore, 33 small entities would be directly regulated by this proposed rule.

Neither processors nor other stakeholders are directly regulated by this proposed rule because they are not apportioned Chinook salmon PSC limits. The processors that take deliveries of trawl-caught GOA groundfish, and other stakeholders not directly regulated by this proposed rule, are therefore excluded from the IRFA.

An IRFA requires a description of any significant alternatives to the proposed rule(s) that accomplish the stated objectives, are consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. This proposed rule has several elements: (1) It establishes authority for NMFS to reapportion Chinook salmon PSC limits among the Central GOA pollock, Western GOA pollock Trawl C/P, Rockfish Program CV, and Non-Rockfish Program CV sectors; (2) it excludes the trawl C/P sector from receiving reapportioned unused Chinook salmon PSC limits; (3) it limits the amount of unused Chinook salmon PSC that can be reapportioned; and (4) it provides flexibility for NMFS to determine if it is appropriate to reallocate in excess of 150 unused Chinook salmon PSC, or a different amount, from the Rockfish Program CV sector to the Non-Rockfish Program CV sector.

During consideration of this proposed rule, the Council and NMFS evaluated a number of alternatives including (1) no action; (2) authorizing reapportionment of unused Chinook salmon PSC limit to the trawl C/P sector; and (3) limiting the percent of Chinook salmon PSC that can be reapportioned to or from a sector based on the amount of the Chinook salmon PSC initially assigned to a sector (between 10 percent and 50 percent of the initial Chinook salmon PSC limit). None of these alternatives met the objectives of this proposed rule and had a smaller impact on small entities.

The no action alternative fails to provide tools to reapportion Chinook salmon PSC limits to pollock and non-pollock trawl sectors to avoid fishery closures, and thus fails to meet the principal objective of this proposed rule. Authorizing trawl C/Ps to receive reapportionments of Chinook salmon PSC limits would be unnecessary based on historical use of Chinook salmon PSC by that sector and the apportionments of PSC granted to that sector under Amendment 97.

Limiting the percent of Chinook salmon PSC that could be reapportioned from a sector could allow some sectors, such as the Non-Rockfish Program CV sector, to use more than twice the amount of Chinook salmon PSC than was initially apportioned under Amendment 97. That would be inconsistent with the goals of Amendment 103. Limiting the amount of Chinook salmon PSC that could be received in a reapportionment to 40 percent or less of the sector's initial limit could be insufficient to adequately reduce the number of trawl fishery closures from reaching a PSC limit. Thus, the Council determined, and NMFS agrees, that these smaller percentages would not be consistent with the goals of the previous GOA trawl PSC limits under Amendments 93 and 97, or with Amendment 103.

No duplication, overlap, or conflict between this proposed rule and existing Federal rules has been identified.

Collection-of-Information Requirements

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that have been approved by the Office of Management and Budget (OMB).

OMB Control Number 0648–0515

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by Office of Management and Budget (OMB) under control number OMB Control Number 0648–0515. Public reporting burden for eLandings landing report is estimated to average ten minutes per individual response and eLandings production report is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Although the eLandings landing report and eLandings at-sea production report are included in the non-substantive revisions for this rule, this rulemaking imposes no additional burden or cost on the regulated community. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSEES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 10, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.;* and Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.7, revise paragraph (b)(8) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(b) * * *

(8) Prohibitions specific to salmon discard in the Western and Central Reporting Areas of the GOA directed fisheries for groundfish. Fail to comply with any requirements of § 679.21(h).

* * * * *

■ 3. In § 679.21:

■ a. Revise paragraph (h); and

■ b. Remove paragraph (i) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(h) *GOA Chinook Salmon PSC Management*—(1) *Applicability.* Regulations in this paragraph apply to trawl vessels participating in the directed fishery for groundfish in the Western and Central reporting areas of the GOA and processors receiving deliveries from these vessels.

(2) *GOA Chinook salmon PSC limits for the pollock sectors (fisheries).* (i) The annual PSC limit for vessels participating in the directed fishery for pollock in the Western reporting area of the GOA is 6,684 Chinook salmon.

(ii) The annual PSC limit for vessels participating in the directed fishery for pollock in the Central reporting area of the GOA is 18,316 Chinook salmon.

(3) *GOA non-pollock trawl sectors.* For the purposes of accounting for the annual Chinook salmon PSC limits at paragraph (h)(4)(i) of this section, the non-pollock trawl sectors are:

(i) *Trawl catcher/processor sector.* The Trawl catcher/processor sector is any catcher/processor vessel fishing for groundfish, other than pollock, with trawl gear in the Western or Central GOA reporting area and processing that groundfish at sea;

(ii) *Rockfish Program catcher vessel sector.* The Rockfish Program catcher vessel sector is any catcher vessel fishing for groundfish, other than pollock, with trawl gear in the Western or Central reporting area of the GOA and operating under the authority of a Central GOA Rockfish Program CQ permit assigned to the catcher vessel sector; and

(iii) *Non-Rockfish Program catcher vessel sector.* The Non-Rockfish Program catcher vessel sector is any catcher vessel fishing for groundfish, other than pollock, with trawl gear in the Western or Central reporting area of the GOA and not operating under the authority of a Central GOA Rockfish Program CQ permit assigned to the catcher vessel sector.

(4) *GOA Chinook salmon PSC limits for non-pollock trawl fisheries.* (i) The annual Chinook salmon PSC limits in the Western and Central reporting areas of the GOA for the sectors defined in paragraph (h)(3) of this section are as follows:

For the following sectors defined in § 679.21(h)(3) . . .	The total Chinook salmon PSC limit in each calendar year is . . .	Unless, the use of the Chinook salmon PSC limit for that sector in a calendar year does not exceed . . .	If so, in the following calendar year, the Chinook salmon PSC limit for that sector will be . . .
(A) Trawl catcher/processor sector	3,600	3,120	4,080
(B) Rockfish Program catcher vessel sector	1,200	N/A	
(C) Non-Rockfish Program catcher vessel sector	2,700	2,340	3,060

(ii) For the Trawl catcher/processor sector defined in paragraph (h)(3)(i) of this section:

(A) The seasonal PSC limit prior to June 1 is 2,376 Chinook salmon if the annual Chinook salmon PSC limit is 3,600. The seasonal PSC limit prior to June 1 is 2,693 Chinook salmon if the annual Chinook salmon PSC limit is 4,080.

(B) The number of Chinook salmon PSC available on June 1 through the remainder of the calendar year is the annual Chinook salmon PSC limit specified for the Trawl catcher/processor sector minus the number of Chinook salmon used by that sector prior to June 1 and any Chinook salmon PSC limit reapportioned to another sector specified at paragraph (h)(5)(iii) of this section prior to June 1.

(5) *Inseason reapportionment of Chinook salmon PSC limits.* (i) On October 1, the Regional Administrator may reallocate any unused Chinook salmon PSC available to the Rockfish Program catcher vessel sector, defined in paragraph (h)(3)(ii) of this section, in excess of 150 Chinook salmon to the Non-Rockfish Program catcher vessel sector, but not to exceed the Non-Rockfish Program catcher vessel sector's limit on Chinook salmon PSC reapportionment as defined in paragraph (h)(5)(iv)(D) of this section.

(ii) On November 15, the Regional Administrator may reallocate all remaining Chinook salmon PSC available to the Rockfish Program catcher vessel sector, defined in paragraph (h)(3)(ii) of this section, to the Non-Rockfish Program catcher vessel sector, but not to exceed the Non-Rockfish Program catcher vessel sector's limit on Chinook salmon PSC reapportionment as defined in paragraph (h)(5)(iv)(D)of this section.

(iii) Any Chinook salmon PSC limit in paragraphs (h)(2) or (h)(4) of this section projected by the Regional Administrator to be unused during the remainder of the fishing year may be reapportioned subject to the Chinook salmon PSC limits in paragraphs (h)(5)(iv)(A) through (D) of this section for the remainder of the fishing year. NMFS will publish notification in the **Federal Register** announcing any Chinook salmon PSC limit reapportionments in the GOA.

(iv) On an annual basis, NMFS shall not reapportion an amount of unused Chinook salmon PSC greater than the following amounts:

(A) 3,342 Chinook salmon to vessels participating in the directed fishery for pollock in the Western reporting area of the GOA;

(B) 9,158 Chinook salmon to vessels participating in the directed fishery for pollock in the Central reporting area of the GOA;

(C) 600 Chinook salmon to the Rockfish Program catcher vessel sector defined in paragraph (h)(3)(ii) of this section; and

(D) 1,350 Chinook salmon to the Non-Rockfish Program catcher vessel sector defined in paragraph (h)(3)(iii) of this section.

(6) *Salmon retention.* (i) The operator of a vessel, including but not limited to a catcher vessel or tender, must retain all salmon until delivered to a processing facility.

(ii) The operator of a catcher/processor or the owner and manager of a shoreside processor or SFP receiving groundfish deliveries from trawl vessels must retain all salmon until the number of salmon by species has been accurately recorded in the eLandings at-sea production report or eLandings groundfish landing report.

(iii) The owner and manager of a shoreside processor or SFP receiving pollock deliveries must, if an observer is present, retain all salmon until the observer is provided the opportunity to count the number of salmon and collect scientific data or biological samples from the salmon.

(iv) The operator of a catcher/processor must retain all salmon until an observer is provided the opportunity to collect scientific data or biological samples from the salmon.

(7) *Salmon discard.* Except for salmon under the PSD program defined in § 679.26, all salmon must be discarded after the requirements at paragraphs (h)(6)(ii) or (h)(6)(iii) of this section have been met.

(8) *GOA Chinook salmon PSC closures.* If, during the fishing year, the Regional Administrator determines that:

(i) Vessels participating in the directed fishery for pollock in the Western reporting area or Central reporting area of the GOA will reach the applicable Chinook salmon PSC limit specified for that reporting area under paragraph (h)(2) of this section or the applicable limit following any reapportionment under paragraph (h)(5) of this section, NMFS will publish notification in the **Federal Register** closing the applicable regulatory area to directed fishing for pollock;

(ii) Vessels in a sector defined in paragraph (h)(3) of this section will reach the applicable Chinook salmon PSC limit specified for that sector under paragraph (h)(4)(i) of this section or the applicable limit following any reapportionment under paragraph (h)(5) of this section, NMFS will publish notification in the **Federal Register** closing directed fishing for all groundfish species, other than pollock, with trawl gear in the Western and Central reporting areas of the GOA for that sector; or

(iii) Vessels in the Trawl catcher/processor sector defined in paragraph (h)(3)(i) of this section will reach the seasonal Chinook salmon PSC limit specified at paragraph (h)(4)(ii)(A) of this section prior to June 1, NMFS will publish notification in the **Federal Register** closing directed fishing for all groundfish species, other than pollock, with trawl gear in the Western and Central reporting areas of the GOA for all vessels in the Trawl catcher/processor sector until June 1. Directed fishing for groundfish species, other than pollock will reopen on June 1 for the Trawl catcher/processor sector defined in paragraph (h)(3)(i) of this section with the Chinook salmon PSC limit determined at paragraph (h)(4)(ii)(B) of this section unless NMFS determines that the amount of Chinook salmon PSC available to the sector is insufficient to allow the sector to fish and not exceed its annual Chinook salmon PSC limit.

[FR Doc. 2016–14237 Filed 6–15–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 116
Thursday, June 16, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Submission for OMB Review; Comment Request

June 13, 2016.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by July 18, 2016. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Livestock Mandatory Reporting Act of 1999.

OMB Control Number: 0581–0186.

Summary of Collection: The Livestock Mandatory Reporting (LMR) Act of 1999 (Pub. L. 106–78; 7 U.S.C. 1635–1636h) mandates the reporting of information on prices and quantities of livestock and livestock products. The 1999 Act was established to provide timely, accurate, and reliable market information on the marketing of cattle, swine, lambs, and related products. Under this program, certain livestock packers, livestock product processors and importers meeting certain criteria, including size as measured by annual slaughter are required to report market information to the Agricultural Marketing Service (AMS). On September 30, 2015, the Agriculture Reauthorizations Act of 2015 (2015 Reauthorization Act) reauthorized LMR for an additional five years, until September 30, 2020. The information is necessary for the proper performance of the functions of AMS. USDA's market news provides all market participants, including producers, with the information necessary to make intelligent and informed marketing decisions.

Need and use of the information: The information collected and recordkeeping requirements will serve as the basis for livestock and livestock product market news reports utilized by the industry for marketing purposes. The reports are used by other Government agencies to evaluate market conditions and calculate price levels. Economists at major agricultural colleges and universities use the reports to make short and long-term market projections. The information is reported up to three times daily and once weekly and is only available directly from those entities required to report under the Act.

Description of Respondents: Business or other for-profit.

Number of Respondents: 128.

Frequency of Responses: Reporting; Weekly; Other (Daily).

Total Burden Hours: 23,791.

Charlene Parker,
Departmental Information Collection Clearance Officer.

[FR Doc. 2016–14264 Filed 6–15–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0119]

Implementation of Revised Lacey Act Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food, Conservation, and Energy Act of 2008 amended the Lacey Act to provide, among other things, that importers submit a declaration at the time of importation for certain plants and plant products. Enforcement of the declaration requirement began on April 1, 2009, and products requiring a declaration are being phased-in. The purpose of this notice is to clarify that the declaration is required for all formal consumption entries of plant and plant products into the United States, including those entries from foreign trade zones and bonded warehouses.

FOR FURTHER INFORMATION CONTACT: Ms. Parul Patel, Senior Agriculturalist, Permitting and Compliance Coordination, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1231; (301) 851–2351.

SUPPLEMENTARY INFORMATION:

Background

The Lacey Act (16 U.S.C. 3371 *et seq.*), first enacted in 1900 and significantly amended in 1981, is the United States' oldest wildlife protection statute. The Act combats trafficking in illegally taken wildlife, fish, and plants. The Food, Conservation, and Energy Act of 2008 amended the Lacey Act by expanding its protection to a broader range of plants and plant products (Section 8204, Prevention of Illegal Logging Practices). As amended, the

Lacey Act makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken in violation of the laws of a U.S. State or any foreign law that protects plants. The Lacey Act also makes it unlawful to make or submit any false record, account, or label for, or any false identification of, any plant.

In addition, Section 3 of the Lacey Act, as amended (16 U.S.C. 3372), makes it unlawful to import certain plants and plant products without an import declaration. The declaration must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from where the plant was harvested. For paper and paperboard products containing recycled content, the declaration also must include the average percent of recycled content without regard for species or country of harvest. Currently, enforcement of the declaration requirement is being phased in, as described in three notices we published in the **Federal Register**,[1] the first on February 3, 2009 (74 FR 5911, Docket No. APHIS–2008–0119), the second on September 2, 2009 (74 FR 45415, Docket No. APHIS–2008–0119), and the third on February 6, 2015 (80 FR 6681, Docket No. APHIS–2008–0019).

In our February 2009 notice, we stated that we would be enforcing the declaration requirement only as to formal consumption entries (*i.e.,* most commercial shipments). We also stated that we did not intend to enforce the declaration requirement for informal entries (*i.e.,* most personal shipments), personal importations, mail (unless subject to formal entry), transportation and exportation entries, in-transit movements, carnet importations (*i.e.,* merchandise or equipment that will be re-exported within a year), and U.S. Foreign Trade Zones (FTZ) and bonded warehouse entries.

The Animal and Plant Health Inspection Service (APHIS) has become aware of certain instances where a Plant and Plant Product Declaration has not been filed for plant or plant products entered into the United States from FTZ and bonded warehouses. This practice is not in conformity with the purpose and intent of the Lacey Act, as amended. We are publishing this notice to make clear that such a declaration is required for all formal consumption entries of plant and plant products imported into the United States, including those entries from FTZ and bonded warehouses. However, such declarations are not required for admission into such FTZ or bonded warehouses, which is what we were referring to in the February 2009 notice when we stated that we did not intend to enforce the declaration requirement for FTZ and warehouse entries.

APHIS will continue to provide the latest information regarding the Lacey Act on our Web site, *http://www.aphis.usda.gov/plant_health/lacey_act/*. The Web site currently contains the Lacey Act, as amended; a slideshow covering background and context, requirements, commodities and products covered, information on prohibitions, and the current status of implementation of the declaration requirement of the Lacey Act; frequently asked questions; the phase-in implementation plan; a link to the Lacey Act Web Governance System (LAWGS); and the paper declaration form. The Web site will be updated as new materials become available.

We encourage persons interested in receiving timely updates on APHIS' Lacey Act efforts to register for our stakeholder registry at *https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/new/* and select "Lacey Act Declaration" as a topic of interest.

Done in Washington, DC, this 10th day of June 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–14247 Filed 6–15–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Submission for OMB Review; Comment Request

June 13, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 18, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Sand Pears from China.

OMB Control Number: 0579–0390.

Summary of Collection: Under the Plant Protection Act (PPA) (7 U.S.C 7701—*et seq*), the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. The regulations in "Subpart—Fruits and Vegetables" (Title 7, CFR 319.56) prohibit or restrict the importation of fruits and vegetables into the U.S. from certain parts of the world. The Animal and Plant Health Inspection Service (APHIS) is responsible for carrying out these duties. APHIS has amended the fruits and vegetables regulations to allow the importation of Chinese sand pears from China into the United States.

Need and Use of the Information: APHIS uses the following information collection activities to allow for the importation of sand pears from China into the United States while continuing to provide protection against the introduction of quarantine pests: Operational Workplan; Production Site Registration; Packinghouse Registration; Test and Certification of Propagative Material; Inspection of Registered Production Site; Investigation for Recertification of Production Site; Tracking System for Packinghouses; Inspection of Packinghouse; Handling Procedure; Labeling of Cartons; Phytosanitary Certificate with Additional Declaration; Trapping System; Recordkeeping for Trap Location; Packinghouse Notification of Pest Detection; Mitigation Measures for Production Site Detection; Mitigation Measures for Packinghouse Detection; Certification of Cold Treatment Facilities; Cold Treatment Facility Numbered Seal; Cold Treatment Review of Treatment Records; Cold Treatment Facility Audits; and Cold Treatment Monitoring. Failing to collect this information would cripple APHIS ability to ensure that sand pears from China are not carrying plant pests and would cause millions of dollars in damage to U.S. agriculture.

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[1] To view these notices and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0119.*

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 29.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 420.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–14226 Filed 6–15–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule Committee (Committee) will meet in Portland, Oregon. Attendees may also participate via webinar and conference call. The Committee operates in compliance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). Committee information can be found by visiting the following Web site: *http://www.fs.usda.gov/main/planningrule/committee.*

DATES: The meeting will be held in-person and via webinar/conference call on the following dates and times:

- Tuesday, July 12, 2016, from 8:30 a.m. to 5:00 p.m. Pacific Standard Time (PST)
- Wednesday, July 13, 2016, from 8:30 a.m. to 5:00 p.m. PST
- Thursday, July 14, 2016, from 8:30 a.m. to 12:00 p.m. PST

All meetings are subject to cancellation. For updated status of meetings prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Courtyard Portland Downtown/Convention Center, 435 NE Wasco St., Portland, Oregon. For anyone who would like to attend via webinar and/or conference call, please visit the Web site listed above or contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the USDA Forest Service Washington Office—Yates Building. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jennifer Helwig, Committee Coordinator, by phone at 202–205–0892, or by email at *jahelwig@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to provide:

1. Continued deliberations on formulating advice for the Secretary,
2. Discussion of Committee work group findings,
3. Hearing public comments, and
4. Administrative tasks.

This meeting is open to the public. The agenda will include time for people to make oral comments of three minutes or less. Individuals wishing to make an oral comment should submit a request in writing by July 5, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee's staff before or after the meeting. Written comments and time requests for oral comments must be sent to Jennifer Helwig, USDA Forest Service, Ecosystem Management Coordination, 201 14th Street SW., Mail Stop 1104, Washington, DC 20250–1104; or by email at *jahelwig@fs.fed.us.* The agenda and summary of the meeting will be posted on the Committee's Web site within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: June 9, 2016.

Leslie A.C. Weldon,

Deputy Chief, National Forest System.

[FR Doc. 2016–14265 Filed 6–15–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Submission for OMB Review; Comment Request

June 13, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 18, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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Rural Business Service (RBS)

Title: 7 CFR 4279–A, Guaranteed Loan-making General.

OMB Control Number: 0570–0018.

Summary of Collection: The Business and Industry (B&I) program was legislated in 1972 under Section 310B of the Consolidated Farm and Rural Development Act, as amended. The purpose of the program is to improve, develop, or finance businesses, industries, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved through bolstering the existing private credit structure through the guaranteeing of quality loans made by lending institutions, thereby providing lasting community benefits. The B&I program is administered by the RBS through Rural Development State and sub-State offices serving each state.

Need and use of the Information: RBS will collect information to determine the eligibility and credit worthiness for a lender or borrower. The information is used by Agency loan officers and approval officials to determine lender program eligibility and for program monitoring.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 225.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 955.

Rural Business-Cooperative Service

Title: Socially-Disadvantaged Groups Grant Program.

OMB Control Number: 0570–0052.

Summary of Collection: Formerly known as the "Small Socially-Disadvantaged Producer Grant Program," the program has changed its name to "The Socially-Disadvantaged Groups Grant Program." It was authorized by section 2744 of the Federal Agriculture Improvement and Reform Act of 2006, Public Law 109–97. The Act provides for the Secretary of Agriculture to make grants to cooperatives or associations of cooperative whose primary focus is to provide assistance to small, socially-disadvantaged producers and whose governing board and/or membership are comprised of at least 75 percent socially-disadvantaged.

Need and Use of the Information: Rural Business Service needs to receive the information contained in this collection of information to make prudent decisions regarding eligibility of applicants and selection priority among competing applicants, to ensure compliance with applicable laws and regulations and to evaluate the projects it believes will provide the most long-term economic benefit to rural areas.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 60.

Frequency of Responses: Recordkeeping; Reporting: Semi-Annually; Annually.

Total Burden Hours: 575.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–14227 Filed 6–15–16; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utility Service

Submission for OMB Review; Comment Request

June 13, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 18, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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Rural Utility Service

Title: Seismic Safety of New Building Construction, 7 CFR 1792, Subpart C.

OMB Control Number: 0572–0099.

Summary of Collection: Seismic hazards present a serious threat to people and their surroundings. These hazards exist in most of the United States, not just on the West Coast. Unlike hurricanes, times and location of earthquakes cannot be predicted; most earthquakes strike without warning and, if of substantial strength, strike with great destructive forces. To reduce risks to life and property from earthquakes, Congress enacted the Earthquake Hazards Reduction Act of 1977 (Pub. L. 95–124, 42 U.S.C. 7701 *et seq.,*) and directed the establishment and maintenance of an effective earthquake reduction program. As a result, the National Earthquake Hazards Reduction Program (NEHRP) was established. The objectives of the NEHRP include the development of technologically and economically feasible design and construction methods to make both new and existing structures earthquake resistant, and the development and promotion of model building codes. 7 CFR part 1792, subpart C, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by the Rural Utility Service (RUS) or the Rural Telephone Bank (RTB) or through lien accommodations or subordinations approved by RUS or RTB.

Need and Use of the Information: Borrowers and grant recipients must provide to RUS a written acknowledgment from a registered architect or engineer responsible for the designs of each applicable building stating that the seismic provisions to 7 CFR part 1792, subpart C will be used in the design of the building. RUS will use this information to: (1) Clarify and inform the applicable borrowers and grant recipients about seismic safety requirements; (2) improve the effectiveness of all RUS programs; and (3) reduce the risk to life and property through the use of approved building codes aimed at providing seismic safety.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 97.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 73.

Rural Utility Service

Title: Water and Waste Disposal Programs Guaranteed Loans.

OMB Control Number: 0572–0122.

Summary of Collection: The Rural Utilities Service (RUS) is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes for the development of water and waste disposal facilities primarily servicing rural residents. The Waste and Water Disposal Programs (WW) of RUS provide insured loan and grant funds through the WW program to finance many types of projects varying in size and complexity. The Waste and Water Disposal Guaranteed Program is implemented through 7 CFR 1779. The guaranteed loan program encourages lender participation and provides specific guidance in the processing and servicing of guaranteed WW loans.

Need and Use of the Information: Rural Development's field offices will collect information from applicants/borrowers, lenders, and consultants to determine eligibility, project feasibility and to ensure borrowers operate on a sound basis and use loan funds for authorized purposes. There are agency forms required as well as other requirements that involve certifications from the borrower, lenders, and other parties. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds and or unsound loans.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 10.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 618.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–14225 Filed 6–15–16; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2017 Economic Census—Commodity Flow Survey.

OMB Control Number: 0607–0932.

Form Number(s): CFS–1000.

Type of Request: Reinstatement, with change, of an expired collection.

Number of Respondents: 100,000.

Average Hours per Response: 2.5.

Burden Hours: 1,000,000.

Needs and Uses: The U.S. Census Bureau plans to conduct the 2017 Commodity Flow Survey (CFS), a component of the 2017 Economic Census, as it is the only comprehensive source of multi-modal, system-wide data on the volume and pattern of goods movement in the United States. The CFS is conducted in partnership with the Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology, U.S. Department of Transportation (DOT).

The survey provides a crucial set of statistics on the value, weight, mode, and distance of commodities shipped by mining, manufacturing, wholesale, and selected retail and services establishments, as well as auxiliary establishments that support these industries. The Census Bureau will publish these shipment characteristics for the nation, census regions and divisions, states, and CFS defined geographic areas. As with the 2012 Commodity Flow Survey, this survey also identifies export, hazardous material, and temperature controlled shipments.

The DOT views updated information on freight flows as critical to understanding the use, performance, and condition of the nation's transportation system, as well as informing transportation investments. Data on the movement of freight also are important for effective analyses of changes in regional and local economic development, safety issues, and environmental concerns. They also provide the private sector with valuable data needed for critical decision-making on a variety of issues including market trends, analysis, and segmentation. Each day, governments, businesses, and consumers make countless decisions about where to go, how to get there, what to ship and which transportation modes to use. Transportation constantly responds to external forces such as shifting markets, changing demographics, safety concerns, weather conditions, energy and environmental constraints, and national defense requirements. Good decisions require having the right information in the right form at the right time.

The CFS provides critical data to federal, state and local government agencies to make a wide range of transportation investment decisions for developing and maintaining an efficient transportation infrastructure that supports economic growth and competitiveness.

Transportation planners require the periodic benchmarks provided by a continuing CFS to evaluate and respond to ongoing geographic shifts in production and distribution centers, as well as policies such as "just in time delivery."

The 2017 CFS will be a mail-out/mail-back or electronic reporting sample survey of approximately 100,000 business establishments in the mining, manufacturing, wholesale, and selected retail and services industries, as well as auxiliary establishments that support these industries.

The CFS is co-sponsored by the BTS and the Census Bureau, with a majority of funding (80 percent) provided by the BTS. In addition to their funding support, the BTS also provides additional technical and planning guidance in the development and implementation of the program.

The CFS is the primary source of information about freight movement in the United States. Estimates of shipment characteristics are published at different levels of aggregation. The CFS produces summary statistics and a public use microdata file. No confidential data are released. The survey covers shipments from establishments in the mining, manufacturing, wholesale, and selected retail industries, as well as auxiliary establishments that support these industries. Federal agencies, state and local transportation planners and policy makers, and private sector transportation managers, analysts, and researchers strongly support the conduct of the CFS.

At the federal level, the data from the CFS are required by a variety of agencies to help accomplish their missions. Results from the CFS help promote economic development and provide for an efficient U.S. transportation system. The CFS enables better informed infrastructure investment decisions, and policies promoting public safety and protecting the natural environment affected by transportation.

Users and supporters of CFS data at the federal level include:

- Federal Highway Administration
- Federal Railroad Administration
- Maritime Administration
- Pipeline and Hazardous Materials Administration
- Bureau of Transportation Statistics
- Bureau of Economic Analysis
- Bureau of Labor Statistics
- Federal Emergency Management Administration
- U.S. Army Corps of Engineers

One of the major uses of the CFS is by the Federal Highway Administration and the Bureau of Labor Statistics to incorporate the CFS into the Freight Analysis Framework (FAF). The CFS acts as the foundation of the FAF and represents almost 70% of the data used to construct the FAF. The FAF is used extensively by the states and localities to conduct freight planning.

At the state and local levels, the information from the CFS is extremely valuable for economic development and transportation planning. The CFS data are used by many localities in responding to requirements contained in the Transportation Equity Act for the 21st Century.

Transportation planners and policy makers in special interest areas have also identified CFS data as critical to their decision making. For example, CFS data on the types and magnitude of hazardous materials shipped in various geographic regions are critical in evaluating and setting policies on the movement of hazardous materials.

CFS data are also crucial to transportation managers, analysts, and researchers in the private sector. These data are used to identify trends in shipping activities, strength of market segments, and existing and potential transportation related issues requiring additional resources.

The CFS has received support from a wide range of users expressing the need for the unique data produced by the survey.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Frequency: Respondents provide quarterly reports over a one year period.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S.C., Sections 8(b), 131 and, 193; 49 U.S.C., Section 6302.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: June 13, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–14233 Filed 6–15–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE649

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Atlantic *Bluefish* Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Monday, July 25, 2016, from 10 a.m. to 12 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held via Webinar with a telephone-only connection option.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION:

Agenda

The purpose of this meeting is for the Monitoring Committee to review, and if necessary, revise the current management measures designed to achieve the recommended Atlantic *Bluefish* catch and landings limits for 2017.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 13, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–14254 Filed 6–15–16; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Friday, June 24, 2016, 10:00 a.m.–11:30 p.m. (ET).

PLACE: Corporation for National and Community Service, 250 E Street SW., Suite 4026, Washington, DC 20525 (Please go to the first floor lobby reception area for escort).

CALL-IN INFORMATION: This meeting is available to the public through the following toll-free call-in number: 888–469–1929 conference call access code number 9799199. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and CNCS will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Replays are generally available one hour after a call ends. The toll-free phone number for the replay is 888–397–5639. TTY: 800–833–3722. The end replay date is August 24, 2016 at 10:59 p.m. (CT).

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Remarks
II. CEO Report
III. Presentation—Star of Service
IV. Public Comments
V. Final Comments and Adjournment

Members of the public who would like to comment on the business of the Board may do so in writing or in person. Individuals may submit written comments to *dpremo@cns.gov* subject line: JUNE 2016 CNCS BOARD MEETING by 4:00 p.m. (ET) on June 20, 2016. Individuals attending the meeting in person who would like to comment will be asked to sign-in upon arrival. Comments are requested to be limited to 2 minutes.

REASONABLE ACCOMMODATIONS: The Corporation for National and Community Service provides reasonable accommodations to individuals with disabilities where appropriate. Anyone who needs an interpreter or other accommodation should notify David Premo at *dpremo@cns.gov* or 202–606–6717 by 5 p.m. (ET) on June 17, 2016.

CONTACT PERSON FOR MORE INFORMATION: Dave Premo, Program Support Specialist, Corporation for National and Community Service, 250 E Street SW., Washington, DC 20525. Phone: 202–606–6717. Fax: 202–606–3460. TTY: 800–833–3722. Email: *dpremo@cns.gov*.

Dated: June 13, 2016.

Jeremy Joseph,

General Counsel.

[FR Doc. 2016–14367 Filed 6–14–16; 4:15 pm]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Fulbright-Hays Group Projects Abroad Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information:

Fulbright-Hays Group Projects Abroad Program.

Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.021A.

Dates:

Applications Available: June 16, 2016.

Deadline for Transmittal of Applications: August 1, 2016.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Fulbright-Hays Group Projects Abroad (GPA) Program is to promote, improve, and develop modern foreign languages and area studies at varying levels of education. The program provides opportunities for faculty, teachers, and undergraduate and graduate students to conduct individual and group projects overseas to carry out research and study in the fields of modern foreign languages and area studies. This competition will support both Fulbright-Hays GPA short-term projects (GPA short-term projects) and Fulbright-Hays GPA long-term projects (GPA long-term projects).

There are three types of GPA short-term projects: (1) Short-term seminar projects of four to six weeks in length designed to increase the linguistic or cultural competency of U.S. students and educators by focusing on a particular aspect of area study, such as the culture of an area or country of study (34 CFR 664.11); (2) curriculum development projects of four to eight weeks in length that provide participants an opportunity to acquire resource materials for curriculum development in modern foreign language and area studies for use and dissemination in the United States (34 CFR 664.12); and (3) group research or study projects of three to twelve months in duration designed to give participants the opportunity to undertake research or study in a foreign country (34 CFR 664.13).

GPA long-term projects are advanced overseas intensive language projects that may be carried out during a full year, an academic year, a semester, a trimester, a quarter, or a summer. GPA long-term projects are designed to take advantage of the opportunities in the foreign country that are not present in the United States when providing intensive advanced foreign language training. Only participants who have successfully completed at least two academic years of training in the language to be studied are eligible for language training under this program. In addition, the language to be studied must be indigenous to the host country and maximum use must be made of local institutions and personnel (34 CFR 664.14).

Applicants may submit only one application under this notice and must identify whether they are applying for a short-term project or a long-term project.

Priorities: This notice contains one absolute priority and four competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority is from the regulations for this program (34 CFR 664.32). Competitive Preference Priorities 1 and 2 are from the notice of final priorities and definitions (NFP) published elsewhere in this issue of the **Federal Register**. Competitive Preference Priority 3 is from the regulations for this program (34 CFR 664.32), and Competitive Preference Priority 4 is from the notice of final priorities published in the **Federal Register** on September 24, 2010 (75 FR 59050).

Absolute Priority: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Specific Geographic Regions of the World.

A group project that focuses on one or more of the following geographic regions of the world: Africa, East Asia, South Asia, Southeast Asia and the Pacific, the Western Hemisphere (Central and South America, Mexico, and the Caribbean), Eastern and Central Europe and Eurasia, and the Near East.

Competitive Preference Priorities: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities.

Under 34 CFR 75.105(c)(2)(i), we award three additional points to an application that meets Competitive Preference Priority 1; three additional points to an application that meets Competitive Preference Priority 2; one additional point to an application that meets Competitive Preference Priority 3; and up to an additional three points to an application, depending on how well the application meets Competitive Preference Priority 4. Applicants for short-term projects may address competitive preference priorities 1, 3, and 4. Applicants for long-term projects may address competitive preference priorities 2, 3, and 4. An applicant must identify the priority or priorities that it believes it meets and provide documentation supporting its claims.

These priorities are:

Competitive Preference Priority 1: Applications for GPA Short-term Projects from Selected Institutions and Organizations (3 Points).

Applications for GPA short-term projects from the following types of institutions and organizations:

○ Minority-Serving Institutions (MSIs)
○ Community colleges
○ New applicants
○ State educational agencies (SEAs)

Competitive Preference Priority 2: Applications for GPA Long-term Projects from Minority Serving Institutions (MSIs) (3 Points).

Applications for GPA long-term advanced overseas intensive language training projects from MSIs.

Competitive Preference Priority 3: Substantive Training and Thematic Focus on Priority Languages (1 Point).

Applications that propose GPA short-term or GPA long-term projects that provide substantive training and thematic focus on any of the 78 priority languages selected from the U.S. Department of Education's list of Less Commonly Taught Languages: Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan

(Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Competitive Preference Priority 4: Inclusion of K–12 Educators (Up to 3 Points).

Applications that propose short-term projects abroad that develop and improve foreign language studies, area studies, or both at elementary and secondary schools by including K–12 teachers or K–12 administrators as at least 50 percent of the project participants.

Definitions:

The following definitions are from the NFP and are designed to provide clarity for applicants addressing the competitive preference priorities.

Minority-serving institution (MSI) means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the Higher Education Act of 1965, as amended (HEA).

Community college means an institution that meets the definition in section 312(f) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1058(f)); or an institution of higher education (as defined in section 101 of the HEA (20 U.S.C. 1001)) that awards degrees and certificates, more than 50 percent of which are not bachelor's degrees (or an equivalent).

New applicant means any applicant that has not received a discretionary grant from the Department of Education under the Fulbright-Hays Act prior to the deadline date for applications under this program.

State educational agency (SEA) means the State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 664. (e) The NFP. (f) The notice of final priorities for this program published in the **Federal Register** on September 24, 2010 (75 FR 59050).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,792,440.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2017 from the list of unfunded applications from this competition.

Estimated Range of Awards:

Short-term projects: $50,000–$100,000.

Long-term projects: $50,000–$250,000.

Estimated Average Size of Awards:

Short-term projects: $80,059.

Long-term projects: $185,025.

Maximum Award: We will reject any GPA short-term project application that proposes a budget exceeding $100,000 for a single project period of 18 months. We will reject any GPA long-term project application that proposes a budget exceeding $250,000 for a single budget period of 24 months.

Estimated Number of Awards: 20.

Short-term projects: 15.

Long-term projects: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period:

Short-term projects: Up to 18 months.

Long-term projects: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* (1) IHEs, (2) State departments of education, (3) Private nonprofit educational organizations, and (4) Consortia of these entities.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.Grants.gov.* To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.021A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to no more than 40 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, and captions. Charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier

New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

- The 40-page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, Budget Information—Non-Construction Programs (ED 524); Part IV, assurances, certifications, and the response to section 427 of the General Education Provisions Act (GEPA); the table of contents; the one-page project abstract; the appendices; or the line-item budget. However, the page limit does apply to all of the application narrative (Part III). If you include any attachments or appendices not specifically requested, these items will be counted as part of the application narrative for purposes of the page-limit requirement.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times: Applications Available:* June 16, 2016.

Deadline for Transmittal of Applications: August 1, 2016.

Applications for grants under this program must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to Other Submission Requirements in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 664.33. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov.*

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a *SAM.gov* Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via *Grants.gov,* you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Fulbright-Hays GPA Program, CFDA number 84.021A, must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Fulbright-Hays GPA Program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.021, not 84.021A).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is

received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov*.
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this program to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov*, please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason, it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov*, the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov*, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the *Grants.gov* system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement for Fulbright-Hays GPA to: Reha Mallory, Fulbright-Hays Group Projects Abroad Program, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E213, Washington, DC 20202. FAX: (202) 453–7502.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.021A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.021A), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 664.31 and are as follows: (a) Plan of operation (20 points); (b) Quality of key personnel (10 points); (c) Budget and cost effectiveness (10 points); (d) Evaluation plan (20 points); (e) Adequacy of resources (5 points); (f) Potential impact of the project on the development of the study of modern foreign languages and area studies in American education (15 points); (g) The project's relevance to the applicant's educational goals and its relationship to its program development in modern foreign languages and area studies (10 points); and (h) The extent to which direct experience abroad is necessary to achieve the project's objectives and the effectiveness with which relevant host country resources will be utilized (10 points). Additional information about these criteria is in the application package for this program.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For FY 2016, GPA short-term project applications will be reviewed by separate panels according to world area. GPA long-term projects will be reviewed by one panel across world areas. A rank order from highest to lowest score will be developed for each of the two types of projects and will be used for funding purposes.

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. Grantees are required to use the electronic data instrument International Resource Information System (IRIS) to complete the final report. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the following measures will be used by the Department to evaluate the success of the GPA short-term program the percentage of GPA participants who disseminated information about or materials from their group project abroad through more than one outreach activity within six months of returning to their home institution. The long-term program, *i.e.,* advanced overseas intensive language projects, will be evaluated by the percentage participants who increased their reading, writing, and/or listening/speaking foreign language scores by one proficiency level. The efficiency is the cost per GPA participant who increased his/her foreign language score in reading, writing, and/or listening/speaking by at least one proficiency level.

The information provided by grantees in their performance reports submitted via IRIS will be the source of data for this measure. Reporting screens for institutions can be viewed at: *http://iris.ed.gov/iris/pdfs/gpa_director.pdf* and *http://iris.ed.gov/iris/pdfs/gpa_participant.pdf.*

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Reha Mallory, Fulbright-Hays Group Projects Abroad Program, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E213, Washington, DC 20202. FAX: (202) 453–7502 or by email: *reha.mallory@ed.gov.*

If you use a TDD or a TTY, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 13, 2016.

Lynn B. Mahaffie,

Deputy Assistant Secretary for Policy, Planning, and Innovation, Delegated the Duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2016–14303 Filed 6–15–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2814–024]

City of Paterson, New Jersey, Great Falls Hydroelectric Company; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 2814–024.

c. *Date Filed:* February 26, 2016.

d. *Submitted By:* The City of Paterson, New Jersey and Great Falls Hydroelectric Company, as co-licensees.

e. *Name of Project:* Great Falls Hydroelectric Project.

f. *Location:* On the Passaic River near the city of Paterson, New Jersey. The project does not occupy federal land.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Robert Gates, Senior Vice President of Operations, Eagle Creek Renewable Energy, 65 Madison Avenue, Suite 500, Morristown, NJ 07960; (973) 998–8400; email—*bob.gates@eaglecreekre.com.*

i. *FERC Contact:* Christopher Millard at (202) 502–8256; or email at *christopher.millard@ferc.gov.*

j. The City of Paterson, New Jersey and Great Falls Hydroelectric Company, as co-licensees, filed a request to use the Traditional Licensing Process on February 26, 2016. The City of Paterson, New Jersey and Great Falls Hydroelectric Company provided public notice of the request on March 9, 2016. In a letter dated June 10, 2016, the Director of the Division of Hydropower Licensing approved the City of Paterson, New Jersey and Great Falls Hydroelectric Company's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New Jersey State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the City of Paterson, New Jersey and Great Falls Hydroelectric Company as the Commission's non-federal representatives for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. The City of Paterson, New Jersey and Great Falls Hydroelectric Company filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2814–024.

Pursuant to 18 CFR 16.8, 16.9, and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 2019.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: June 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–14221 Filed 6–15–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–196]

Alabama Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 2146–196.

c. *Date Filed:* April 7, 2016, as supplemented June 1, 2016.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Coosa River Hydroelectric Project.

f. *Location:* The Logan Martin Development (Logan Martin Lake) in St. Clair County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Justin Bearden, Corporate Real Estate, 600 North 18th Street, Birmingham, AL, 35203, (205) 257–6769.

i. *FERC Contact:* Kevin Anderson, (202) 502–6465, *kevin.anderson@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* July 11, 2016.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2146–196.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Alabama Power Company proposes to permit Sahyog, LLC to construct and operate, for commercial use, three boat storage structures, three boat piers, a gravel parking area and driveway, and an asphalt turnaround on 6.69 acres of project lands. Alabama Power Company also proposes to permit the continued use of an existing boat ramp (proposed for widening), pier, and boardwalk that predate its permitting program. Approximately 105,716 square feet of project lands would be disturbed during construction.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: June 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–14220 Filed 6–15–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1802–000]

Hermiston Generating Company, L.P.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Hermiston Generating Company, L.P.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 30, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–14219 Filed 6–15–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–1788–001.

Applicants: LE Energy, LLC.

Description: Amendment to June 7, 2016 LE Energy, LLC tariff filing.

Filed Date: 6/10/16.

Accession Number: 20160610–5191.

Comments Due: 5 p.m. ET 7/1/16.

Docket Numbers: ER16–1908–000.

Applicants: International Transmission Company.

Description: § 205(d) Rate Filing: Cancellation of Facilities Agreement in Compliance with Docket No. ER12–1757 to be effective 3/25/2016.

Filed Date: 6/10/16.

Accession Number: 20160610–5254.

Comments Due: 5 p.m. ET 7/1/16.

Docket Numbers: ER16–1909–000.

Applicants: International Transmission Company.

Description: § 205(d) Rate Filing: Cancellation of Operating Agreement in Compliance with Docket No. ER12–1765 to be effective 3/25/2016.

Filed Date: 6/10/16.

Accession Number: 20160610–5257.

Comments Due: 5 p.m. ET 7/1/16.

Docket Numbers: ER16–1910–000.

Applicants: Michigan Electric Transmission Company, LLC.

Description: § 205(d) Rate Filing: Cancellation of Concurrence to Operating Agreement to be effective 3/25/2016.

Filed Date: 6/10/16.

Accession Number: 20160610–5267.

Comments Due: 5 p.m. ET 7/1/16.

Docket Numbers: ER16–1911–000.

Applicants: Michigan Electric Transmission Company, LLC.

Description: § 205(d) Rate Filing: Cancellation of Concurrence to Facilities Agreement to be effective 3/25/2016.

Filed Date: 6/10/16.

Accession Number: 20160610–5268.

Comments Due: 5 p.m. ET 7/1/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–14217 Filed 6–15–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2739–012; ER14–2499–003; ER10–2755–010; ER10–2751–007; ER10–2743–007.

Applicants: LS Power Marketing, LLC, Oneta Power, LLC, Las Vegas Power Company, LLC, Renaissance Power, L.L.C, Bluegrass Generation Company, L.L.C.

Description: Supplement to December 30, 2015 Updated Market Power Analysis in Southwest Power Pool Region of the LS Power Development, LLC subsidiaries.

Filed Date: 6/9/16.

Accession Number: 20160609–5272.

Comments Due: 5 p.m. ET 6/30/16.

Docket Numbers: ER10–2794–018; ER14–2672–003; ER12–1825–016.

Applicants: EDF Trading North America, LLC, EDF Energy Services, LLC, EDF Industrial Power Services (CA), LLC.

Description: Supplement to December 30, 2015 Updated Market Power Analysis for the Southwest Power Pool Region of the EDF Sellers.

Filed Date: 6/8/16.

Accession Number: 20160608–5113.

Comments Due: 5 p.m. ET 6/29/16.

Docket Numbers: ER16–897–005.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2016–06–09 Filing in Compliance with May 31 Order Delaying CPM Effective Date to be effective 9/25/2016.

Filed Date: 6/9/16.

Accession Number: 20160609–5265.

Comments Due: 5 p.m. ET 6/30/16.

Docket Numbers: ER16–1904–000.

Applicants: ISO New England Inc.

Description: Request for Limited Waiver of ISO New England Inc.

Filed Date: 6/9/16.

Accession Number: 20160609–5275.

Comments Due: 5 p.m. ET 6/30/16.

Docket Numbers: ER16–1905–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3197 KCP&L GMO and City of Galt, MO Interconnection Agr to be effective 6/9/2016.

Filed Date: 6/10/16.

Accession Number: 20160610–5053.

Comments Due: 5 p.m. ET 7/1/16.

Docket Numbers: ER16–1906–000.

Applicants: Wabash Valley Power Association, Inc.

Description: § 205(d) Rate Filing: Revised Amendments to Rate Schedule—Docket No. ER16–1452—Clone to be effective 6/17/2016.

Filed Date: 6/10/16.

Accession Number: 20160610–5074.

Comments Due: 5 p.m. ET 7/1/16.

Docket Numbers: ER16–1907–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–06–10_AS Qualification Filing to be effective 8/9/2016.

Filed Date: 6/10/16.

Accession Number: 20160610–5140.

Comments Due: 5 p.m. ET 7/1/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–14216 Filed 6–15–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1788–001]

LE Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding LE Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 30, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–14218 Filed 6–15–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1804–000]

Deepwater Wind Block Island, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Deepwater Wind Block Island, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 29, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–14148 Filed 6–15–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14759–000]

City of Paterson, New Jersey; Notice of Effective Date of Withdrawal of Notice of Intent

On February 29, 2016, the City of Paterson, New Jersey (City) filed a Notice of Intent (NOI) for the 10.95-megawatt Great Falls Hydroelectric Project located on the Passaic River near the city of Paterson, New Jersey. On May 18, 2016, the City filed a letter informing the Commission that it was withdrawing its NOI for the above-referenced project.

Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure,[1] a withdrawal of a pleading is effective at the end of 15 days from the date of filing the notice of withdrawal. No motion in opposition to the notice of withdrawal has been filed, and the Commission has taken no action to disallow the withdrawal; thus, the withdrawal is effective on June 2, 2016.

Dated: June 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–14222 Filed 6–15–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

Administrative Settlement Agreement and Order on Consent for Payment of Past Response Costs: Lincoln Park Superfund Site, Canyon City, Fremont County, Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed agreement; request for public comment.

SUMMARY: In accordance with the requirements of section 122(h)(l) of the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9604, 9606(a), 9607 and 9622, notice is hereby given of the proposed administrative settlement under section 122(h)(l) of CERCLA, between the U.S. Environmental Protection Agency ("EPA") and Cotter Corporation (N.S.L.) ("Settling Party"). The proposed Settlement Agreement requires the Settling Party to pay for past oversight costs. The Settling Party consents to and will not contest the authority of the United States to enter into the Agreement or to implement or enforce its terms. The Settling Parties recognize that the Agreement has been negotiated in good faith and that the Agreement is entered into without the admission or adjudication of any issue of fact or law.

DATES: Comments must be submitted on or before July 18, 2016. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the agreement. The Agency will consider all comments received and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations that indicate that the agreement is inappropriate, improper, or inadequate.

ADDRESSES: The proposed agreement and additional background information relating to the agreement, as well as the Agency's response to any comments are or will be available for public inspection at the EPA Superfund Record Center, 1595 Wynkoop, Denver, Colorado, by appointment.

Comments and requests for a copy of the proposed agreement should be addressed to Sharon Abendschan, Enforcement Specialist, Environmental Protection Agency-Region 8, Mail Code 8ENF–RC, 1595 Wynkoop Street, Denver, Colorado 80202 and should reference the Lincoln Park Superfund Site, Canyon City, Fremont County, Colorado.

FOR FURTHER INFORMATION CONTACT: Steven Moores, Enforcement Attorney, Legal Enforcement Program, Environmental Protection Agency-Region 8, Mail Code 8ENF–L, 1595 Wynkoop Street, Denver, Colorado 80202, (303) 312–6857.

Dated: June 2, 2016.

Suzanne Bohan,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 2016–14294 Filed 6–15–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0323; FRL–9947–50]

Pyridate; Receipt of Applications for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Idaho, Indiana, Michigan, Oregon, Washington, and Wisconsin Departments of Agriculture to use the herbicide pyridate (CAS No. 55512–33–9) on mint (peppermint and spearmint) to control redroot pigweed and kochia. The applicants propose a use of a pesticide that was voluntarily canceled in 2004, and which is now considered to be unregistered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before July 1, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2016–0323, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC) (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more

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[1] 18 CFR 385.216(b) (2015).

information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of FIFRA, 7 U.S.C. 136p, at the discretion of the EPA Administrator, a federal or state agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Idaho, Indiana, Michigan, Oregon, Washington, and Wisconsin Departments of Agriculture have requested the EPA Administrator to issue specific exemptions for the use of pyridate on mint (peppermint and spearmint) to control redroot pigweed and kochia. Information in accordance with 40 CFR part 166 was submitted as part of this request. The applicants' submissions which provide an explanation of the need for the exemption as well as the proposed use pattern can be found at *http://www.regulations.gov* in their section 18 emergency exemption application requests for use of pyridate on mint to control redroot pigweeds and kochia.

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for specific exemptions proposing use of a pesticide that was voluntarily canceled in 2004, and which is now considered to be unregistered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

This notice provides an opportunity for public comment on the six applications. The Agency, will review and consider all comments received during the comment period in determining whether to issue specific exemptions requested by the Idaho, Indiana, Michigan, Oregon, Washington, and Wisconsin Departments of Agriculture.

Authority: 7 U.S.C. 136 *et seq.*

Dated: June 8, 2016.

Daniel J. Rosenblatt,

Acting, Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2016–14288 Filed 6–15–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9947–82–Region 1]

Proposed Administrative Settlement Agreement and Covenant Not To Sue Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act of 1986; In Re: Ely Copper Mine Superfund Site, Located in Vershire, Vermont

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: The EPA is hereby providing notice of a proposed settlement agreement concerning the Ely Copper Mine Superfund Site in Vershire, Vermont. The settlement agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.*, and the authority of the Attorney General of the United States to compromise and settle claims of the United States. The proposed settlement agreement is with the following parties: Green Crow Corporation ("Green Crow") and Dwight Hill Forest, LLC ("Dwight Hill") (together the "settling parties"). Under the proposed settlement, Green Crow, a company specializing in the timberland and wood products industries, will effectuate transfer of the main site property to Dwight Hill, but remain involved in the timber harvesting and management of the property. Green Crow will also be responsible for seven years of monitoring and thirty years of maintenance of the remedy at the site. In addition, the proposed settlement requires the settling parties to: Allow EPA to remove and use borrow material located on the site property and on an adjacent property owned by Green Crow, provide EPA and its contractors access to the site property and Green Crow's adjacent property, and prepare and record any documents necessary to implement institutional controls. The proposed settlement includes a covenant not to sue the settling parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a).

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received

disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the US EPA Region 1 OSRR Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109.

DATES: Comments must be submitted on or before July 18, 2016.

ADDRESSES: Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region I, 5 Post Office Square, Suite 100, Mailcode ORA18–1, Boston, MA 02109 and should refer to: In re: Green Crow Corporation, U.S. EPA Region 1 Docket No. CERCLA–01–2016–0001.

FOR FURTHER INFORMATION CONTACT: The proposed settlement and additional background information relating to the settlement are available for public inspection at the Vershire Town Hall, 6894 VT Rt. 113, Vershire, VT or at the US EPA Region 1 OSRR Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109. In addition, a copy of the proposed settlement agreement can be obtained from Ann Gardner, U.S. Environmental Protection Agency, Region I, 5 Post Office Square, Suite 100, Mailcode OES04–4, Boston, MA 02109–3912, or by email at *gardner.ann@epa.gov.* Additional information on the Ely Copper Mine Superfund Site can be found through the U.S. EPA Region I Web site at ***http://www.epa.gov/region1/cleanup/index.html.***

Dated: June 2, 2016.

Bryan Olson,

Director, Office of Site Remediation and Restoration, U.S. EPA, Region 1.

[FR Doc. 2016–14296 Filed 6–15–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0179, 3060–0500 and 3060–1203]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before July 18, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0179.

Title: Section 73.1590, Equipment Performance Measurements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 13,049 respondents and 13,049 responses.

Estimated Time per Response: 0.5–18 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 12,335 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.1590(d) requires licensees of AM, FM and TV stations to make audio and video equipment performance measurements for each main transmitter. These measurements and a description of the equipment and procedures used in making the measurements must be kept on file at the transmitter or remote control point for two years. In addition, this information must be made available to the FCC upon request.

OMB Control Number: 3060–0500.

Title: Section 76.1713, Resolution of Complaints.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 10,750 respondents and 21,500 responses.

Estimated Hours per Response: 1–17 hours.

Frequency of Response: Recordkeeping and third party disclosure requirements; annual reporting requirement.

Total Annual Burden: 193,500 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.1713 states cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. Commission and franchising authorities, upon request. These records shall be maintained for at least a one-year period. Prior to being referred to the Commission, complaints from subscribers about the quality of the television signal delivered must be referred to the local franchising authority and the cable system operator.

OMB Control Number: 3060–1203.

Title: Section 79.107—User Interfaces Provided by Digital Apparatus; Section 79.108—Video Programming Guides and Menus Provided by Navigation Devices; Section 79.110—Complaint Procedures for User Interfaces, Menus and Guides, and Activating Accessibility Features on Digital Apparatus and Navigation Devices.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; individuals or households; not-for-profit institutions; and state, local, or tribal Governments.

Number of Respondents and Responses: 4,245 respondents; 517,052 responses.

Estimated Time per Response: 0.0167 hours to 10 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement; Recordkeeping requirement.

Obligation to Respond: Voluntary. The statutory authority for this information collection is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and Sections 4(i), 4(j), 303(r), 303(u), 303(aa), 303(bb), and 716(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 303(u), 303(aa), 303(bb), and 617(g).

Total Annual Burden: 24,153 hours.

Total Annual Cost: $70,500.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, "Informal Complaints and Inquiries," which became effective on January 25, 2010. The Commission believes that it provides sufficient safeguards to protect the privacy of individuals who file complaints under 47 CFR 79.110.

Privacy Impact Assessment: The Privacy Impact Assessment (PIA) for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy-Impact-Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: On November 20, 2015, in document FCC 15–156, the Commission released a Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, MB Docket No. 12–108, FCC 15–156, adopting additional rules implementing Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) related to accessible user interfaces and video programming guides and menus. These rules are codified at 47 CFR 79.107 and 79.108. First, the Second Report and Order implements Section 204's requirement that both the "appropriate built-in apparatus functions" and the "on-screen text menus or other visual indicators built in to the digital apparatus" to access such functions be "usable by individuals who are blind or visually impaired" by relying on the existing definition of "usable" in Section 6.3(l) of the Commission's rules. The 6.3(l) definition of "usable" requires that "individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation, bills and technical support which is provided to individuals without disabilities." In addition, the Second Report and Order adopts information, documentation, and training requirements comparable to those in Section 6.11 of the Commission's rules for entities covered by both Section 204 and Section 205 of the CVAA. The Second Report and Order also adopts consumer notification requirements for equipment manufacturers of digital apparatus and navigation devices that will require manufacturers to publicize the availability of accessible devices on manufacturer Web sites that must be accessible to those with disabilities. The Second Report and Order requires MVPDs, as well as manufacturers, to ensure that the contact office or person listed on their Web site is able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features.

The following rule sections and other requirements contain new and revised information collection requirements for which the Commission is seeking approval from the Office of Management and Budget (OMB):

(1) Usability requirements for manufacturers of digital apparatus.

The Second Report and Order adopts usability requirements for digital apparatus covered by 47 CFR 79.107. A digital apparatus manufacturer must make functions that are used for the reception, play back, or display of video programming, as well as on-screen text menus or other visual indicators used to access these functions, usable to individuals who are blind or visually impaired. Pursuant to 47 CFR 79.107(a)(5), the term "usable" means that individuals with disabilities have access to information and documentation on the full functionalities of digital apparatus, including instructions, product information (including accessible feature information), documentation, bills, and technical support which are provided to individuals without disabilities.

(2) Information, documentation, and training requirements for manufacturers of digital apparatus.

Pursuant to 47 CFR 79.107(d), manufacturers of digital apparatus must ensure access to information and documentation provided to customers, including user guides, bills, installation guides for end-user installable devices, and product support communications, regarding both the product in general and the accessibility features of the product. Manufacturers of digital apparatus must include the contact method for obtaining this information and documentation in general product information. Manufacturers should take such other steps as necessary including providing a description of the accessibility and compatibility features of the product and end-user product documentation upon request in alternate formats or alternate modes at no additional charge; and ensuring usable customer support and technical support in the call centers and service centers which support their products at no additional charge. In developing training programs, manufacturers of digital apparatus must consider the following topics: (i) Accessibility requirements of individuals with disabilities; (ii) means of communicating with individuals with disabilities; (iii) commonly used adaptive technology used with the manufacturer's products; (iv) designing for accessibility; and (v) solutions for accessibility and compatibility.

(3) Information, documentation, and training requirements for covered MVPDs and manufacturers of navigation devices.

Pursuant to 47 CFR 79.108(f), covered MVPDs and manufacturers of navigation devices must ensure access to information and documentation provided to customers, including user guides, bills, installation guides for end-user installable devices, and product support communications, regarding both the product in general and the accessibility features of the product. MVPDs and manufacturers of navigation devices must include the contact method for obtaining this information and documentation in general product information. MVPDs and manufacturers should take such other steps as necessary including providing a description of the accessibility and compatibility features of the product and end-user product documentation upon request in alternate formats or alternate modes at no additional charge; and ensuring usable customer support and technical support in the call centers and service centers which support their products at no additional charge. In developing training programs, MVPDs and manufacturers of navigation devices must consider the following topics: (i) Accessibility requirements of individuals with disabilities; (ii) means of communicating with individuals with disabilities; (iii) commonly used adaptive technology used with the manufacturer's products; (iv) designing for accessibility; and (v) solutions for accessibility and compatibility. If a consumer with a disability requests an accessible navigation device, this also constitutes a request for a description of the accessibility features of the device and end-user product documentation in accessible formats.

(4) Notifications by covered manufacturers regarding the availability of accessible digital apparatus. Pursuant to 47 CFR 79.107(e), manufacturers of digital apparatus must provide notice on their official Web sites about the availability of accessible devices. Manufacturers must prominently display information about accessible devices and solutions on their Web sites in a way that makes such information available to all consumers and in a format that is accessible to people with disabilities. The notice for digital apparatus must publicize the availability of accessible devices and the specific person, office or entity who can answer consumer questions about which products contain the required accessibility features. The contact office or person listed on the Web site must be able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features.

(5) Notifications by covered manufacturers regarding the availability of accessible navigation devices.

Pursuant to 47 CFR 79.108(d)(2), manufacturers of navigation devices must provide notice on their official Web sites about the availability of accessible devices. Manufacturers must prominently display information about accessible devices and solutions on their Web sites in a way that makes such information available to all consumers and in a format that is accessible to people with disabilities. The notice for navigation devices must publicize the availability of accessible devices and separate solutions and explain the means for making requests for accessible equipment and the specific person, office, or entity to whom such requests are to be made. The contact office or person listed on the Web site must be able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–14223 Filed 6–15–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10477, Parkway Bank, Lenoir, North Carolina

Notice is hereby given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Parkway Bank, Lenoir, North Carolina, ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of Parkway Bank on April 26, 2013. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: June 13, 2016.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–14260 Filed 6–15–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 14, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *QCR Holdings, Inc.*, Moline, Illinois, to acquire 100 percent of Community State Bank, Ankeny, Iowa.

Board of Governors of the Federal Reserve System, June 10, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–14191 Filed 6–15–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 13, 2016.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Simmons First National Corporation*, Pine Bluff, Arkansas, to acquire 100 percent of Citizens National Bank, Athens, Tennessee.

B. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Flagship Financial Group, Inc.*, Eden Prairie, Minnesota; to acquire Landmark Investor Group, Inc., Eden Prairie, Minnesota, and thereby indirectly acquire Landmark Community Bank, Isanti, Minnesota.

Board of Governors of the Federal Reserve System, June 13, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–14256 Filed 6–15–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects: New Automated Community Services Block Grant (CSBG) Annual Report Form.

Title: Community Services Block Grant (CSBG) Annual Report.

OMB No.:

Description: Section 678E of the Community Services Block Grant (CSBG) Act requires States, including the District of Columbia and the Commonwealth of Puerto Rico, and U.S. territories, to annually prepare and submit a report on the measured performance of the State and the eligible entities in the State. Prior to the participation of the State in the performance measurement system, the State shall include in the report any information collected by the State relating to such performance. Each State shall also include in the report an accounting of the expenditure of funds received by the State through the CSBG program, including an accounting of funds spent on administrative costs by the State and the eligible entities, and funds spent by the eligible entities on the direct delivery of local services, and shall include information on the number of and characteristics of clients served under the subtitle in the State, based on data collected from the eligible entities. The State shall also include in the report a summary describing the training and technical assistance offered by the State.

This request will support new automated Annual Report forms, streamlining the administrative information, and incorporating Results Oriented Management and Accountability (required in Section 676(b)(12) of the CSBG Act). The revised and automated forms may impose an added first-use burden; however, this burden will diminish substantially in subsequent years. Copies of the proposed collection of information can be obtained by visiting *http://www.acf.hhs.gov/programs/ocs/programs/csbg.*

Respondents: State Governments, including the District of Columbia and the Commonwealth of Puerto Rico, and U.S. territories and CSBG Eligible Entities (Community Action Agencies).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CSBG Annual Report (States)	52	1	164	8,528
CSBG Annual Report (Eligible Entities)	1,035	1	242	250,470

Estimated Total Annual Burden Hours: 258,998.

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chap. 35) Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–14229 Filed 6–15–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Tribal Maternal, Infant, and Early Childhood Home Visiting Program Implementation Plan Guidance and Form 1: Demographic and Service Utilization Data.

OMB No.: 0970–0389 (expired).

Description: Social Security Act, Title V, Section 511 (42 U.S.C. 711), as amended by the Medicare Access and Children's Health Insurance Program (CHIP) Reauthorization Act of 2015 (Public Law (Pub. L.) 114–10), created the Maternal, Infant, and Early Childhood Home Visiting Program (MIECHV) and authorized the Secretary of HHS (in Section 511(h)(2)(A)) to award grants to Indian tribes (or a consortium of Indian tribes), tribal organizations, or urban Indian organizations to conduct an early childhood home visiting program. The legislation set aside 3 percent of the total MIECHV program appropriation (authorized in Section 511(j)) for grants to tribal entities. Tribal MIECHV grants, to the greatest extent practicable, are to be consistent with the requirements of the MIECHV grants to states and jurisdictions (authorized in Section 511(c)), and include conducting a needs assessment and establishing quantifiable, measurable benchmarks.

The Administration for Children and Families, Office of Child Care and Office of the Deputy Assistant Secretary for Early Childhood Development, in collaboration with the Health Resources and Services Administration, Maternal and Child Health Bureau, awarded grants for the Tribal MIECHV Program. The Tribal MIECHV grant awards support 5-year cooperative agreements to conduct community needs and readiness assessments, plan for and implement high-quality, culturally-relevant, evidence-based home visiting programs in at-risk Tribal communities, and engage in rigorous evaluation activities to build the knowledge base on home visiting among American Indian and Alaska Native populations.

In Year 1 of the cooperative agreement, grantees must (1) conduct a comprehensive community needs and readiness assessment and (2) develop a plan to respond to identified needs. Grantees will be required to conduct or update a needs and readiness assessment and develop an implementation plan to respond to those needs, including a plan for demographic and service utilization data, performance measurement, and continuous quality improvement, and participating in or conducting rigorous evaluation activities. Grantees are expected to submit the implementation plan by the end of Year 1 of the grant, with draft submission milestones throughout the first year. As part of the non-competing continuation application for Years 3–5 of the grant, Tribal MIECHV grantees will update their implementation plans as necessary to ensure that the plan accurately reflects activities to be completed throughout the remainder of the grant.

Following each year that Tribal MIECHV grantees implement home visiting services, they must also submit Form 1: Demographic and Service Utilization Data.

Respondents: Tribal Maternal, Infant, and Early Childhood Home Visiting Program Grantees. (The information collection does not include direct interaction with individuals or families that receive the services).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Tribal Maternal, Infant, and Early Childhood Home Visiting Implementation Plan Guidance	25	1	1000	25,000
Tribal MIECHV Form 1 Demographic & Service Utilization Data & Service Data	25	1	500	12,500
Estimated Annual Burden Hours				37,500

Estimated Total Annual Burden Hours: 37,500.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn:

Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–14244 Filed 6–15–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.676]

Announcement of the Award of Two Single-Source Program Expansion Supplement Grants Under the Unaccompanied Children's (UC) Program

AGENCY: Office of Refugee Resettlement, ACF, HHS.

ACTION: Notice of award of two single-source program expansion supplement grants under the Unaccompanied Children's (UC) Program.

SUMMARY: The Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), announces the award of two single-source program expansion supplement grants for a total of $16,476,723 under the Unaccompanied Children's (UC) Program.

Organization	Location	Amount
BCFS Health and Human Services	San Antonio, TX	$9,525,387
Southwest Key, Inc	Austin, TX	6,951,336

ORR has been identifying additional capacity to provide shelter for potential increases in apprehensions of Unaccompanied Children at the U.S. Southern Border. Planning for increased shelter capacity is a prudent step to ensure that ORR is able to meet its responsibility, by law, to provide shelter for Unaccompanied Children referred to its care by the Department of Homeland Security (DHS).

The expansion supplement grants will support the need to increase shelter capacity to accommodate the increasing numbers of UCs being referred by DHS. Both grantees have the infrastructure, licensing, experience and appropriate level of trained staff to meet the service requirements and the urgent need for expansion of services. The grantees provide residential services to UC in the care and custody of ORR, as well as services to include counseling, case management, and additional support services to the family or to the UC and their sponsor when a UC is released from ORR's care and custody.

DATES: Supplemental award funds will support activities from October 1, 2015, through September 30, 2016.

FOR FURTHER INFORMATION CONTACT: Jallyn Sualog, Director, Division of Children's Services, Office of Refugee Resettlement, 330 C. Street SW., Washington, DC 20201. Email: *DCSProgram@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: ORR is continuously monitoring its capacity to shelter the unaccompanied children referred to HHS, as well as the information received from interagency partners, to inform any future decisions or actions.

ORR has specific requirements for the provision of services. Award recipients must have the infrastructure, licensing, experience, and appropriate level of trained staff to meet those requirements. The expansion of the existing program and its services through this supplemental award is a key strategy for ORR to be prepared to meet its responsibility to provide shelter for Unaccompanied Children referred to its care by DHS and so that the US Border Patrol can continue its vital national security mission to prevent illegal migration, trafficking, and protect the borders of the United States.

Statutory Authority: This program is authorized by—

(A) Section 462 of the Homeland Security Act of 2002, which in March 2003, transferred responsibility for the care and custody of Unaccompanied Alien Children from the Commissioner of the former Immigration and Naturalization Service (INS) to the Director of ORR of the Department of Health and Human Services (HHS).

(B) The Flores Settlement Agreement, Case No. CV85–4544RJK (C.D. Cal. 1996), as well as the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Pub. L. 110–457), which authorizes post release services under certain conditions to eligible children. All programs must comply with the Flores Settlement Agreement, Case No. CV85–4544–RJK (C.D. Cal. 1996), pertinent regulations and ORR policies and procedures.

Christopher Beach,

Senior Grants Policy Specialist, Office of Administration, Office of Financial Services, Division of Grants Policy.

[FR Doc. 2016–14267 Filed 6–15–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0350]

Use of International Standard ISO 10993–1, 'Biological evaluation of medical devices—Part 1: Evaluation and testing within a risk management process"; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the guidance entitled "Use of International Standard ISO 10993–1, 'Biological evaluation of medical devices—Part 1: Evaluation and testing within a risk management process.' " FDA has developed this guidance document to assist industry in preparing Premarket Applications (PMAs), Humanitarian Device Exceptions (HDEs), Investigational Device Applications (IDEs), Premarket Notifications (510(k)s), and de novo requests for medical devices that come into direct contact or indirect contact with the human body in order to determine the potential for an unacceptable adverse biological response resulting from contact of the component materials of the device with the body.

The purpose of this guidance is to provide further clarification and updated information on the use of International Standard ISO 10993–1, "Biological evaluation of medical devices—Part 1: Evaluation and testing within a risk management process" to

support applications to FDA. This guidance supersedes Office of Device Evaluation (ODE) Blue Book Memorandum #G95–1 (1995), entitled "Use of International Standard ISO–10993, 'Biological Evaluation of Medical Devices—Part 1: Evaluation and Testing.' "

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2013–D–0350 for "Use of International Standard ISO 10993–1, 'Biological evaluation of medical devices—Part 1: Evaluation and testing within a risk management process.' " Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled "Use of International Standard ISO 10993–1, 'Biological evaluation of medical devices—Part 1: Evaluation and testing within a risk management process' " to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Jennifer Goode, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1212, Silver Spring, MD 20993–0002, 301–796–6374.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has developed this guidance document to assist industry in PMAs, HDEs, IDEs, 510(k)s, and de novo requests for medical devices that come into direct contact or indirect contact with the human body in order to determine the potential for an unacceptable adverse biological response resulting from contact of the component materials of the device with the body.

The purpose of this guidance is to provide further clarification and updated information on the use of International Standard ISO 10993–1, "Biological evaluation of medical devices—Part 1: Evaluation and testing within a risk management process" to support applications to FDA. This guidance supersedes ODE Blue Book Memorandum #G95–1 (1995), entitled "Use of International Standard ISO–10993, 'Biological Evaluation of Medical Devices—Part 1: Evaluation and Testing.' "

The scope of this document is limited to the biological evaluation of sterile and non-sterile medical devices that come into direct or indirect contact with the human body and covers the following topics: Use of risk assessments for biocompatibility evaluations for a proposed medical device; use of ISO 10993–1 and the FDA-modified matrix to determine the relevant biocompatibility endpoints for an evaluation; general biocompatibility testing considerations, including test article preparation; specific considerations for the following testing: Cytotoxicity, sensitization, hemocompatibility, pyrogenicity, implantation, genotoxicity, carcinogenicity, reproductive and developmental toxicity, and degradation assessments; chemical assessment recommendations; and considerations for labeling devices as "-free."

A draft of this guidance was made available in the **Federal Register** on

April 23, 2013, and the comment period closed on July 22, 2013. The final guidance was revised in response to the comments to emphasize use of risk assessment and leveraging of prior information within a submission to potentially reduce the need for new biocompatibility testing.

Commenters also requested additional details regarding biocompatibility testing of devices in contact with gas pathways and color additives used in medical devices. FDA has determined that these concepts would be appropriately addressed in separate guidance documents and have therefore been removed from this final guidance.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on Use of International Standard ISO 10993-1, "Biological evaluation of medical devices—Part 1: Evaluation and testing within a risk management process." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of "Use of International Standard ISO 10993-1, 'Biological evaluation of medical devices—Part 1: Evaluation and testing within a risk management process'" may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1811 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in 21 CFR part 58 have been approved under OMB control number 0910-0119; the collections of information in 21 CFR parts 801 and 809 have been approved under OMB control number 0910-0485; the collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910-0120; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910-0078; the collections of information in 21 CFR part 814, subparts A through E, have been approved under OMB control number 0910-0231; the collections of information in 21 CFR part 814, subpart H, have been approved under OMB control number 0910-0332; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910-0073; and the collections of information in the guidance document "Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff" have been approved under OMB control number 0910-0756.

Dated: June 8, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016-14190 Filed 6-15-16; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2016-N-0001]

Pediatric Clinical Investigator Training; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration's (FDA) Office of Pediatric Therapeutics, and the Eunice Kennedy Shriver National Institute of Child Health and Human Development are announcing a 2-day public workshop entitled "Pediatric Clinical Investigator Training." The purpose of this workshop is to provide investigators with training and expertise in designing and conducting clinical trials in pediatric patients that will lead to appropriate labeling. Although we have learned a lot about conducting pediatric trials over the past two decades, there are still challenges that need to be addressed. The training course is intended to provide investigators with: (1) A clear understanding of some of the challenges of studying products in the pediatric population, including: Pediatric study design, neonates, biomarkers, endpoints, orphan drugs and rare disease trial design, formulations; (2) an overview of extrapolation as it relates to the pediatric population; and (3) an overview of ethically appropriate methods related to the design of clinical trials in the pediatric population.

DATES: The public workshop will be held on September 12 and 13, 2016, from 8 a.m. to 4 p.m. Registration to attend the workshop should be completed by September 6, 2016. (See the **SUPPLEMENTARY INFORMATION** section for instructions).

ADDRESSES: This public workshop will be held at the DoubleTree Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Terrie L. Crescenzi, Office of Pediatric Therapeutics, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, *terrie.crescenzi@fda.hhs.gov;* or Betsy Sanford, Office of Pediatric Therapeutics, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, *elizabeth.sanford@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In July 2012, the Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144) made permanent the pediatric initiatives, Best Pharmaceuticals for Children Act (BPCA) and Pediatric Research Equity Act, which have stimulated pediatric research over the past two decades. The National Institutes of Health section of BPCA legislation, however, is due for reauthorization in 2017. Though much progress has been made, pediatric trials for the purpose of developing product use information are still performed less frequently than adult trials. As such, current standards for trials are much more oriented to adult scientific, ethical, and clinical processes. This situation is due, in part, to the fact that pediatric trials have both scientific challenges and unique attributes and requirements which must be met if the data are to be accepted or used by FDA.

The development of safe and effective products in the pediatric population presents many challenges. These challenges include trial design, appropriate endpoints, extrapolation of data from adults, and ethical issues. It is extremely important that pediatric researchers recognize and understand the challenges and differences between the standards for adult trials and pediatric trials. Researchers are responsible for ensuring the safe and ethical treatment of pediatric patients and obtaining adequate and reliable data to support regulatory decisions. There is a critical need for further pediatric research on medical products to obtain additional data which will help ensure that these products are safe and effective in the pediatric population. Much of the progress which has been made in obtaining proper therapeutic information in pediatrics has occurred in the older and more populous pediatric populations. The challenge of obtaining data from non-verbal children, neonates, and for conditions existing in limited populations is much more difficult. This need reinforces our responsibility to educate clinical investigators to assure that children are only enrolled in research that is scientifically necessary, ethically sound, and designed to meet the challenges of review by FDA.

II. Workshop Attendance and Participation

If you wish to attend this workshop, visit *http://pedsinvesttrain.eventbrite.com*. Please register by September 6, 2016. Those who are unable to attend the workshop in person can register to view a live Webcast of the workshop. You will be asked to indicate in your registration if you plan to attend in person or via the Webcast. Your registration will also require your complete contact information, including name, title, affiliation, address, email address, and phone number. Seating will be limited so early registration is recommended. Registration is free and will be on a first-come, first-served basis. Onsite registration on the day of the workshop will be based on space availability. Persons attending the workshop are advised that FDA is not responsible for providing access to electrical outlets.

Registration information, the agenda, and additional background materials can be found at *http://www.fda.gov/NewsEvents/MeetingsConferencesWorkshops/ucm392506.htm*.

Webcast: The workshop will be Webcast live and available on the Internet.

The live Webcast on September 12, 2016, will be available at: *https://event.webcasts.com/starthere.jsp?ei=1093258*. After the morning session, users will be automatically redirected to the afternoon link. Should you lose connection over lunch, please use the following link for the afternoon session (note that it is different from the morning's session): *https://event.webcasts.com/starthere.jsp?ei=1093259*. On September 13, 2016, the live Webcast will be available at: *https://event.webcasts.com/starthere.jsp?ei=1093263*. After the morning session, users will be automatically redirected to the afternoon link. Should you lose connection over lunch, please use the following link for the afternoon session (note that it is different from the morning's session): *https://event.webcasts.com/starthere.jsp?ei=1093265*. The Webcast will only be for listening and there will not be an opportunity for Webcast participants to speak. The Webcast will be posted after the workshop at: *http://wcms.fda.gov/FDAgov/NewsEvents/MeetingsConferencesWorkshops/ucm392506.htm?ssSourceSiteId=null&SSContributor=true*, approximately 30 days after the workshop.

If you need special accommodations due to a disability, please contact Betsy Sanford (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance.

Dated: June 10, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–14230 Filed 6–15–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1495]

Factors To Consider Regarding Benefit-Risk in Medical Device Product Availability, Compliance, and Enforcement Decisions; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled "Factors to Consider Regarding Benefit-Risk in Medical Device Product Availability, Compliance, and Enforcement Decisions." This draft guidance, when finalized, is intended to provide clarity for FDA staff and industry regarding the benefit and risk factors FDA may consider in prioritizing resources for compliance and enforcement efforts to maximize medical device quality and patient safety. Although product availability and other medical device compliance and enforcement decisions are generally fact-specific, FDA believes that consideration of the factors listed in the draft guidance, when relevant, will improve the consistency and transparency of those decisions and that a shared understanding of benefit and risk will better align industry's and FDA's focus on actions that maximize benefit to patients, improve medical device quality, and reduce risk to patients. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 14, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets

Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–1495 for the draft guidance entitled "Factors to Consider Regarding Benefit-Risk in Medical Device Product Availability, Compliance, and Enforcement Decisions." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ann M. Ferriter, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3680, Silver Spring, MD 20993, 301–796–5530.

SUPPLEMENTARY INFORMATION:

I. Background

The draft guidance, when finalized, is intended to provide a shared benefit-risk framework for FDA and stakeholders and to set forth overarching principles. FDA may consider the types of benefit-risk factors described in the draft guidance—including reliable patient preference information from a representative sample—on a case-by-case basis when determining the appropriate regulatory action to take and to help ensure that informed and science-based decisions are made to the greatest extent practicable. Factors may be weighted differently for different types of decisions.

In addition, the draft guidance, when finalized, is intended to harmonize FDA's approach to weighing benefits and risks for medical device product availability, compliance, and enforcement decisions with FDA's benefit-risk framework for evaluating medical device marketing and investigational device exemption (IDE) applications. The benefit-risk factors in the draft guidance also support evaluation of medical devices with real world evidence.

The principles described in the draft guidance may be applicable to industry and FDA decisions. The benefit-risk factors may be considered when device manufacturers evaluate appropriate responses to nonconforming product or regulatory compliance issues, such as determining whether to limit the availability of a medical device (*e.g.,* a voluntary recall or market withdrawal). FDA may evaluate the benefit-risk factors during, for example, assessments of device shortage situations, selection of the appropriate regulatory engagement mechanism following an inspection during which regulatory non-compliance was observed, evaluation of recalls and consideration of petitions for variance from those sections of the Quality System regulation (21 CFR part 820) for which there were inspectional observations during a premarket approval (PMA) preapproval inspection. Premarket review decisions, such as premarket notification (510(k)) substantial equivalence determinations, de novo classification, and PMA, humanitarian device exemption (HDE) or IDE application approval decisions, are beyond the scope of this draft guidance.

The draft guidance applies to both diagnostic and therapeutic medical devices subject to, and exempt from, premarket review. The scope of the draft guidance excludes medical devices regulated by FDA's Center for Biologics Evaluation and Research (CBER); combination products, as defined in 21 CFR 3.2(e), for which the Center for Devices and Radiological Health (CDRH) is not the lead Center; and electronic products that are not devices as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321) as regulated by CDRH under the Electronic Product Radiation Control (ERPC) provisions in the FD&C Act and implementing regulations (21 CFR Subchapter J—Radiological Health). This draft guidance does not apply to products (*e.g.,* drugs, biologics, dietary supplements, foods, tobacco products, or cosmetics) regulated by other FDA Centers.

II. Significant of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on "Factors to Consider Regarding Benefit-Risk in Medical Device Product Availability, Compliance, and Enforcement Decisions." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.*

Persons unable to download an electronic copy of "Factors to Consider regarding Benefit-Risk in Medical Device Product Availability, Compliance, and Enforcement Decisions" may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500065 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations.

These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 7, subpart C, have been approved under OMB control number 0910–0249. The collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485. The collections of information in 21 CFR part 803, regarding medical device reporting, have been approved under OMB control numbers 0910–0291, 0910–0437, and 0910–0471. The collections of information in 21 CFR part 806 have been approved under OMB control number 0910–0359. The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120. The collections of information in 21 CFR part 810, regarding medical device recall authority, have been approved under OMB control number 0910–0432. The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078. The collections of information in 21 CFR part 814, subparts B and E, have been approved under OMB control number 0910–0231. The collections of information in 21 CFR part 820, regarding the Quality System regulation, have been approved under OMB control number 0910–0073. The collections of information in 21 CFR part 822, regarding postmarket surveillance of medical devices, have been approved under OMB control number 0910–0449.

Dated: June 8, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–14200 Filed 6–15–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on June 28, 2016, from 8 a.m. to 3:15 p.m., and June 29, 2016, from 8 a.m. to 4:15 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Lauren D. Tesh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On June 28, 2016, information will be presented to gauge investigator interest in exploring potential pediatric development plans for four products in various stages of development for adult cancer indications. The subcommittee will consider and discuss issues concerning diseases to be studied, patient populations to be included, and possible study designs in the development of these products for pediatric use. The discussion will also provide information to the Agency pertinent to the formulation of written requests for pediatric studies, if appropriate. The products under consideration are: (1) VENETOCLAX, application sponsored by AbbVie, Inc.; (2) TAZEMETOSTAT, application sponsored by Epizyme, Inc.; and (3) ATEZOLIZUMAB, application sponsored by Roche/Genentech.

On June 29, 2016, during the morning session, information will be presented to gauge investigator interest in exploring potential pediatric development plans for two products in various stages of development for adult cancer indications. The subcommittee will consider and discuss issues concerning diseases to be studied, patient populations to be included, and possible study designs in the development of these products for pediatric use. The discussion will also provide information to the Agency pertinent to the formulation of written requests for pediatric studies, if appropriate. The products under consideration are: (1) LOXO–101, application sponsored by Loxo Oncology, Inc.; and (2) ENTRECTINIB, application sponsored by Ignyta, Inc.

During the afternoon session, information will be presented on the current unmet clinical need in the nearly uniformly fatal brain tumor, diffuse intrinsic pontine glioma (DIPG), which occurs predominantly in the pediatric age group. The diagnosis of DIPG is typically based on characteristic radiographic and clinical features in lieu of brain biopsy, and histological confirmation. Recent data has demonstrated that the biology and pathophysiology of these tumors differ. There are no approved drugs for this disease. Clinical investigators seek to exploit precision medicine approaches to DIPG and use potentially predictive information from the genomic signature of tumors at either diagnosis or relapse. This information can be used to select specific molecularly targeted drugs based on the genetic aberrations of an individual patient's tumor. The Agency will seek the input of the subcommittee, including an assessment of benefit/risk given the potential for an adverse event associated with a surgical intervention in the brainstem.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person on or before June 21, 2016. Oral presentations from the public will be scheduled between approximately 8:50 a.m. and 9:10 a.m., 11 a.m. and 11:20 a.m., 1:55 p.m. and 2:15 p.m., and 3:50 p.m. and 4:05 p.m. on June 28, 2016, and between approximately 8:50 a.m. and 9:10 a.m., 10:55 a.m. and 11:15 a.m., and 3 p.m. and 3:20 p.m. on June 29, 2016. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 16, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 17, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Lauren D. Tesh at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 10, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–14212 Filed 6–15–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Tribal Management Grant Program; Extension of Due Dates

AGENCY: Indian Health Service, HHS.

ACTION: Notice; extension of due dates.

SUMMARY: This document extends due dates in the Fiscal Year 2016 Tribal Management Grant Program funding announcement that was published in the **Federal Register** (81 FR 20396) on April 7, 2016. Several key dates have been extended.

DATES: The Application Deadline Date, Signed Tribal Resolutions Due Date, and Proof of Non-Profit Status Due Date are all extended to June 17, 2016.

FOR FURTHER INFORMATION CONTACT: Michelle Eagle Hawk, Deputy Director, Office of Direct Service and Contracting Tribes, Indian Health Service, 5600 Fishers Lane, Mail Stop 08E17, Rockville, MD 20857, telephone (301) 443–1104. (This is not a toll-free number.)

Dated: June 9, 2016.

Elizabeth A. Fowler,

Deputy Director for Management Operations, Indian Health Service.

[FR Doc. 2016–14235 Filed 6–15–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice of Tribal Consultation and Urban Confer Sessions on the State of the Great Plains Area Indian Health Service; Correction

AGENCY: Indian Health Service (IHS), Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Indian Health Service published a document in the **Federal Register** on June 3, 2016, for the Notice of Tribal Consultation and Urban Confer Sessions on the State of the Great Plains Area Indian Health Service. The notice contained the incorrect U.S. Code regarding consultation.

FOR FURTHER INFORMATION CONTACT: CAPT Chris Buchanan, Acting Director, Great Plains Area, Indian Health Service, 115 4th Ave. SE., Suite 309, Aberdeen, South Dakota, (605) 226–7584, Fax (605) 226–7541.

Correction

In the **Federal Register** of June 3, 2016, in FR Doc. 2016–13135, on page 35787, in the first column, under the heading "**SUPPLEMENTARY INFORMATION:** fourth paragraph," delete "[42 U.S.C. 9835, Section 640(l)(4)(A)]," and insert "2 U.S.C. 1534."

Dated: June 9, 2016.

Elizabeth A. Fowler,

Deputy Director for Management Operations, Indian Health Service.

[FR Doc. 2016–14232 Filed 6–15–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: July 12, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3An.12N, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Rebecca H. Johnson, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: June 10, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–14196 Filed 6–15–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Selected Topics in Transfusion Medicine.

Date: July 5–6, 2016.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Anti Infective Therapeutics.

Date: July 7–8, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Grand Chicago Riverfront, 71 East Wacker Drive, Chicago, IL 60601.

Contact Person: Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198 MSC 7808, Bethesda, MD 20892, (301) 435–2306, *kaushikbasun@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Diabetes, Musculoskeletal, and Toxin Exposure Epidemiology.

Date: July 8, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: George Vogler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, MSC 7770, Bethesda, MD 20892, (301) 237–2693, *voglergp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Drug Development and Therapeutics.

Date: July 12–13, 2016.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *ltopol@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cartilage and Bone Biology.

Date: July 13, 2016.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435–1222, *nurminskayam@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 10, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–14192 Filed 6–15–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Mentored Basic Research and Pathways to Independence Award Applications.

Date: July 12–13, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health 5635 Fishers Lane, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jeanette M Hosseini, Ph.D., Scientific Review Officer, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892, 301–451–2020, *jeanetteh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 10, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–14194 Filed 6–15–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Interventions/Biomarkers.

Date: July 8, 2016.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review, Officer Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861 *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: June 10, 2016.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–14197 Filed 6–15–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Joint meeting of the National Cancer Advisory Board and NCI Board of Scientific Advisors, June 20, 2016, 04:30 p.m. to June 21, 2016, 05:30 p.m., National Institutes of Health, Building 31, 31 Center Drive, C Wing, 6th Floor, Conference Room 10, Bethesda, MD, 20892 which was published in the **Federal Register** on May 16, 2016, 81 FR 30316.

This meeting is being amended to change the start time of the open session on June 21, 2016 from 8:00 a.m. to 8:30 a.m. The meeting is partially closed to the public.

Dated: June 9, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–14193 Filed 6–15–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Human Immunology Project Consortium.

Date: July 13–20, 2016.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, Ballroom A,B,C, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Paul A. Amstad, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G41, NIAID/NIH/DHHS, 5601 Fishers Lane, Bethesda, MD 20892–7616, 240–669–5067, *pamstad@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 10, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–14195 Filed 6–15–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

New Date for the October 2016 Customs Broker License Examination

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection has changed the date on which the semi-annual written examination for an individual broker's license will be held in October 2016.

DATES: The customs broker's license examination scheduled for October 2016 will be held on Wednesday, October 5.

FOR FURTHER INFORMATION CONTACT: John Lugo, Broker Management Branch, Office of Trade, (202) 863–6015.

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker's licenses and permits, and provides for the taking of disciplinary action against brokers that have engaged in specified types of infractions. This section also provides that an examination may be conducted to assess an applicant's qualifications for a license.

The regulations issued under the authority of section 641 are set forth in Title 19 of the Code of Federal Regulations, part 111 (19 CFR 111). Part 111 sets forth the regulations regarding the licensing of, and granting of permits to, persons seeking to transact customs business as customs brokers. These regulations also include the qualifications required of applicants and the procedures for applying for licenses and permits. 19 CFR 111.11 sets forth the basic requirements for a broker's license and, in 19 CFR 111.11(a)(4), provides that an applicant for an individual broker's license must attain a passing grade (75 percent or higher) on a written examination.

19 CFR 111.13 sets forth the requirements and procedures for the written examination for an individual broker's license and states that written customs broker license examinations will be given on the first Monday in April and October unless the regularly scheduled examination date conflicts with a national holiday, religious observance, or other foreseeable event.

CBP recognizes that the first Monday in October 2016 coincides with the observance of the religious holiday of Rosh Hashanah. In consideration of this conflict, CBP has decided to change the regularly scheduled date of the examination. This document announces that CBP has scheduled the October 2016 broker license examination for Wednesday, October 5, 2016.

Dated: June 6, 2016.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2016–14215 Filed 6–15–16; 8:45 am]

BILLING CODE 9111–14–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–16–021]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 24, 2016 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–534–537 and 731–TA–1274–1278 (Final) (Corrosion-Resistant Steel products from China, India, Italy, Korea, and Taiwan). The Commission is currently scheduled to complete and file its determinations and views of the Commission on July 7, 2016.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: June 8, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–14342 Filed 6–14–16; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0111]

Agency Information Collection Activities; Proposed eCollection eComments Requested Extension: Revision of a Currently Approved Collection

AGENCY: Community Relations Service (CRS), Department of Justice

ACTION: 60-Day notice.

SUMMARY: CRS will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until August 15, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gilbert Moore, Deputy Director, Community Relations Service, 600 E Street NW., Suite 6000, Washington, DC 20530. Office Phone: 202–305–2925.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision and extension of a currently approved collection.

2. *The Title of the Form/Collection:* CRS "Quality of Service" Survey.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1103–0111. The applicable component within the Department of Justice is the Community Relations Service.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and local elected officials, law enforcement executives, Education Administrators, community leaders, and others who receive CRS services. Abstract: The CRS Survey will be provided to those who engage in CRS services as our work concludes in a case. The result of the Survey, in aggregate, will be used to ensure that CRS is providing quality services, and to identify needed modifications and enhancements.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The Survey will be distributed to key participants in CRS cases at the conclusion of each case. This is estimated to be five people per case. CRS conducts approximately 500 cases per year. As such, CRS anticipates distributing approximately 2,500 surveys per year. Since the Survey is voluntary, CRS anticipates a response rate of approximately ten percent, which would result in 250 responses annually. It is estimated that completing the Survey will take less than three minutes per respondent. The estimated total public burden hours associated with this collection is 12.5 hours per fiscal year.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 125 annual total CRS burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: June 13, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–14257 Filed 6–15–16; 8:45 am]

BILLING CODE 4410–17–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Notice

DATE AND TIME: The Legal Services Corporation's Finance Committee will meet telephonically on June 22, 2016. The meeting will commence at 3:30 p.m., EDT, and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington, DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately "MUTE" your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda
2. Discussion with Management regarding recommendations for LSC's fiscal year 2018 budget request
    - Jim Sandman, President
    - Carol Bergman, Director, Government Relations and Public Affairs
3. Discussion with Inspector General regarding the OIG's fiscal year 2018 budget request
    - Jeffery Schanz, Inspector General
    - David Maddox, Assistant Inspector General for Management & Evaluation
4. Consider and act on FY 2018 Budget Request *Resolution 2016–XXX*
5. Public comment
6. Consider and act on other business
7. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: June 14, 2016.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs and General Counsel.

[FR Doc. 2016–14401 Filed 6–14–16; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: The National Endowment for the Humanities will hold twenty-seven meetings of the Humanities Panel, a federal advisory committee, during July, 2016. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates. The meetings will open at 8:30 a.m. and will convene by 5:00 p.m. on the dates specified below.

ADDRESSES: The meetings will be held at the National Endowment for the Humanities at Constitution Center at 400 7th Street SW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW., Room 4060, Washington, DC 20506; (202)606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. *Date:* July 11, 2016.

This meeting will discuss applications on the subject of British Literature for Fellowships for University Teachers, submitted to the Division of Research Programs.

2. *Date:* July 12, 2016.

This meeting will discuss applications on the subjects of American History, Social Sciences for the Awards for Faculty grant program, submitted to the Division of Research Programs.

3. *Date:* July 12, 2016.

This meeting will discuss applications on the subjects of History and Politics for the Awards for Faculty grant program, submitted to the Division of Research Programs.

4. *Date:* July 18, 2016.

This meeting will discuss applications on the subjects of Arts, Literature, Media, and Communication for the Awards for Faculty grant program, submitted to the Division of Research Programs.

5. *Date:* July 18, 2016.

This meeting will discuss applications on the subjects of Arts, Literature, and Philosophy for the Awards for Faculty grant program, submitted to the Division of Research Programs.

6. *Date:* July 19, 2016.

This meeting will discuss applications for Humanities Access Grants, submitted to the Office of Challenge Grants.

7. *Date:* July 19, 2016.

This meeting will discuss applications on the subject of Philosophy for Fellowships for University Teachers, submitted to the Division of Research Programs.

8. *Date:* July 19, 2016.

This meeting will discuss applications on the subject of Philosophy for Fellowships for University Teachers, submitted to the Division of Research Programs.

9. *Date:* July 20, 2016.

This meeting will discuss applications on the subject of American Studies for Fellowships for University Teachers, submitted to the Division of Research Programs.

10. *Date:* July 20, 2016.

This meeting will discuss applications on the subject of Middle Eastern Studies for Fellowships for University Teachers, submitted to the Division of Research Programs.

11. *Date:* July 21, 2016.

This meeting will discuss applications for Humanities Access Grants, submitted to the Office of Challenge Grants.

12. *Date:* July 21, 2016.

This meeting will discuss applications on the subjects of Communication, Media, Rhetoric, and Language for Fellowships for University Teachers, submitted to the Division of Research Programs.

13. *Date:* July 21, 2016.

This meeting will discuss applications on the subjects of Cinema and Theater Studies for Fellowships for University Teachers, submitted to the Division of Research Programs.

14. *Date:* July 22, 2016.

This meeting will discuss applications on the subject of American Literature for Fellowships for University Teachers, submitted to the Division of Research Programs.

15. *Date:* July 22, 2016.

This meeting will discuss applications on the subject of Art History for Fellowships for University Teachers, submitted to the Division of Research Programs.

16. *Date:* July 25, 2016.

This meeting will discuss applications on the subjects of Music and Dance for Fellowships for University Teachers, submitted to the Division of Research Programs.

17. *Date:* July 25, 2016.

This meeting will discuss applications for Fellowships for Advanced Social Science Research on Japan, submitted to the Division of Research Programs.

18. *Date:* July 26, 2016.

This meeting will discuss applications for Humanities Access Grants, submitted to the Office of Challenge Grants.

19. *Date:* July 26, 2016.

This meeting will discuss applications on the subject of American History for Fellowships for University Teachers, submitted to the Division of Research Programs.

20. *Date:* July 26, 2016.

This meeting will discuss applications on the subject of American History for Fellowships for University Teachers, submitted to the Division of Research Programs.

21. *Date:* July 27, 2016.

This meeting will discuss applications on the subject of Religious Studies for Fellowships for University Teachers, submitted to the Division of Research Programs.

22. *Date:* July 27, 2016.

This meeting will discuss applications on the subjects of Political Science, Urban Studies, and Jurisprudence for Fellowships for University Teachers, submitted to the Division of Research Programs.

23. *Date:* July 28, 2016.

This meeting will discuss applications on the subjects of Comparative Literature and Literary Theory for Fellowships for University Teachers, submitted to the Division of Research Programs.

24. *Date:* July 28, 2016.

This meeting will discuss applications on the subjects of German and Slavic Studies for Fellowships for University Teachers, submitted to the Division of Research Programs.

25. *Date:* July 28, 2016.

This meeting will discuss applications for Humanities Access Grants, submitted to the Office of Challenge Grants.

26. *Date:* July 29, 2016.

This meeting will discuss applications on the subject of Art History for Fellowships for University Teachers, submitted to the Division of Research Programs.

27. *Date:* July 29, 2016.

This meeting will discuss applications on the subject of British Literature for Fellowships for University Teachers, submitted to the Division of Research Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: June 13, 2016.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2016–14243 Filed 6–15–16; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Large Scale Networking (LSN)—Joint Engineering Team (JET)

AGENCY: The Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation.

ACTION: Notice of meetings.

Contact: Dr. Grant Miller at *miller@nitrd.gov* or (703) 292–4873. Reference the NITRD Web site at: *http://www.nitrd.gov/.*

Date/Location: The JET meetings are held on the third Tuesday of each month, 11:00 a.m.–2:00 p.m., at the National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Please note that public seating for these meetings is limited and is available on a first-come, first-served basis. WebEx and/or Teleconference participation is available for each meeting. Please reference the JET Web site for updates.

JET Web site: The agendas, minutes, and other meeting materials and information can be found on the JET Web site at: *https://www.nitrd.gov/nitrdgroups/index.php?title=Joint_Engineering_Team_(JET).*

SUMMARY: The JET, established in 1997, provides for information sharing among Federal agencies and non-Federal participants with interest in high performance research networking and networking to support science applications. The JET reports to the Large Scale Networking (LSN) Interagency Working Group (IWG).

Public Comments: The government seeks individual input; attendees/participants may provide individual advice only. Members of the public are welcome to submit their comments to *jet-comments@nitrd.gov.* Please note that under the provisions of the Federal Advisory Committee Act (FACA), all public comments and/or presentations will be treated as public documents and will be made available to the public via the JET Web site.

Submitted by the National Science Foundation in support of the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO) on June 13, 2016.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2016–14250 Filed 6–15–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Large Scale Networking (LSN)—Middleware and Grid Interagency Coordination (MAGIC) Team

AGENCY: The Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation.

ACTION: Notice of meetings.

Contact: Dr. Grant Miller at *miller@nitrd.gov* or (703) 292–4873. Reference the NITRD Web site at: *http://www.nitrd.gov/.*

Date/Location: The MAGIC Team meetings are held on the first Wednesday of each month, 2:00 p.m.–4:00 p.m., at the National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Please note that public seating for these meetings is limited and is available on a first-come, first-served basis. WebEx and/or Teleconference participation is available for each meeting. Please reference the MAGIC Team Web site for updates.

MAGIC Web site: The agendas, minutes, and other meeting materials and information can be found on the MAGIC Web site at: *https://www.nitrd.gov/nitrdgroups/index.php?title=Middleware_And_Grid_Interagency_Coordination_(MAGIC).*

SUMMARY: The MAGIC Team, established in 2002, provides a forum for information sharing among Federal agencies and non-Federal participants with interests and responsibility for middleware, Grid, and cloud projects. The MAGIC Team reports to the Large Scale Networking (LSN) Interagency Working Group (IWG).

Public Comments: The government seeks individual input; attendees/participants may provide individual advice only. Members of the public are welcome to submit their comments to *magic-comments@nitrd.gov.* Please note that under the provisions of the Federal Advisory Committee Act (FACA), all public comments and/or presentations will be treated as public documents and will be made available to the public via the MAGIC Team Web site.

Submitted by the National Science Foundation in support of the Networking and Information

Technology Research and Development (NITRD) National Coordination Office (NCO) on June 13, 2016.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2016–14249 Filed 6–15–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Faster Administration of Science and Technology Education and Research (FASTER) Community of Practice (CoP)

AGENCY: The Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation.

ACTION: Notice of meetings.

Contact: Mr. Fouad Ramia at *ramia@nitrd.gov* or (703) 292–4873. Reference the NITRD Web site at: *http://www.nitrd.gov/.*

Date/Location: The FASTER CoP meetings will be held monthly (July 2016–June 2017) at the National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Please note that public seating for these meetings is limited and is available on a first-come, first-served basis. WebEx and/or Teleconference participation is available for each meeting. Please reference the FASTER CoP Web site for meeting dates and times.

FASTER Web site: The agendas, minutes, and other meeting materials and information can be found on the FASTER Web site at: *https://www.nitrd.gov/nitrdgroups/index.php?title=FASTER.*

SUMMARY: The goal of the FASTER CoP is to enhance collaboration and accelerate agencies' adoption of advanced IT capabilities developed by Government-sponsored IT research. FASTER, seeks to accelerate deployment of promising research technologies; share protocol information, standards, and best practices; and coordinate and disseminate technology assessment and testbed results.

Public Comments: The government seeks individual input; attendees/participants may provide individual advice only. Members of the public are welcome to submit their comments to *Faster-comments@nitrd.gov.* Please note that under the provisions of the Federal Advisory Committee Act (FACA), all public comments and/or presentations will be treated as public documents and will be made available to the public via the FASTER CoP Web site.

Submitted by the National Science Foundation in support of the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO) on June 13, 2016.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2016–14251 Filed 6–15–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–38; NRC–2016–0111]

Duke Energy; McGuire Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and a finding of no significant impact (FONSI) for its review and approval of the decommissioning funding plan submitted by Duke Energy Carolinas, LLC (Duke), on December 13, 2012, for the Independent Spent Fuel Storage Installation (ISFSI) at McGuire Nuclear Station (MCG) in Huntersville, North Carolina.

DATES: The EA and FONSI referenced in this document are available on June 16, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0111 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0111. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the section of this document entitled, Availability of Documents.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Richard Baum, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0018, email: *Richard.Baum@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of the decommissioning funding plan (DFP) for the McGuire ISFSI. Duke submitted a DFP for NRC review and approval by letter dated December 13, 2012 (ADAMS Accession No. ML12353A033). The NRC staff has prepared a final EA (ADAMS Accession No. ML16144A261) in support of its review of Duke's DFP, in accordance with the NRC regulations in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," which implement the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). Based on the EA, the NRC staff has determined that approval of the DFP for the McGuire ISFSI will not significantly affect the quality of the human environment, and, accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not warranted because under 10 CFR 51.22(c)(10) or 10 CFR 51.22(c)(11) do not apply to the DFP reviews, since the categorical exclusions only apply to license amendments and the 10 CFR 72.30 DFP reviews and approvals are not license amendments.

II. Environmental Assessment

Background

The McGuire ISFSI is located in Huntersville, North Carolina. Duke is authorized by NRC, under License No. SFGL–11, to store spent nuclear fuel at the McGuire ISFSI.

The NRC requires its licensees to plan for the eventual decommissioning of their licensed facilities prior to license termination. On June 17, 2011, the NRC published a final rule in the **Federal Register** amending its decommissioning planning regulations (76 FR 35512). The final rule amended the NRC regulation, 10 CFR 72.30, which concerns financial assurance and decommissioning for ISFSIs. This regulation now requires each holder of, or applicant for, a license under 10 CFR part 72 to submit, for NRC review and approval, a DFP. The purpose of the DFP is to demonstrate the licensee's financial assurance, *i.e.,* that funds will be available to decommission the ISFSI. The NRC staff is reviewing the DFP submitted by Duke on December 13, 2012. Specifically, the NRC must determine whether Duke's DFP contains the information required by 10 CFR 72.30(b) and whether Duke has provided reasonable assurance that funds will be available to decommission the ISFSI.

Description of the Proposed Action

The proposed action is the NRC's review and approval of Duke's DFP submitted in accordance with 10 CFR 72.30(b). To approve the DFP, the NRC will evaluate whether the decommissioning cost estimate (DCE) adequately estimates the cost to conduct the required ISFSI decommissioning activities prior to license termination, including identification of the volume of onsite subsurface material containing residual radioactivity that will require remediation to meet the license termination criteria in 10 CFR 20.1402 or 10 CFR 20.1403. NRC will also evaluate whether the aggregate dollar amount of Duke's financial instruments provide adequate financial assurance to cover the DCE and that the financial instruments meet the criteria of 10 CFR 72.30(e).

The proposed action does not require any changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require any new construction or land disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of Duke's DFP. The scope of the proposed action does not include, and will not result in, the review and approval of any decontamination or decommissioning activity or license termination for the ISFSI or any other part of McGuire.

Need for the Proposed Action

The proposed action provides a means for Duke to demonstrate that it will have sufficient funding to cover the costs of decommissioning the ISFSI, including the reduction of the residual radioactivity at the ISFSI to the level specified by the applicable NRC license termination regulations concerning release of the property (10 CFR 20.1402 or 10 CFR 20.1403).

Environmental Impacts of the Proposed Action

The NRC's approval of the DFP will not change the scope or nature of the operation of the ISFSI and will not authorize any changes to licensed operations or maintenance activities. The NRC's approval of the DFP will not result in any changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Moreover, the approval of the DFP will not authorize any construction activity or facility modification. Therefore, the NRC staff concludes that the approval of the DFP is a procedural and administrative action that will not result in any significant impact to the environment.

Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), requires federal agencies to consider the effects of their undertakings on historic properties. In accordance with the NHPA implementing regulations at 36 CFR part 800, "Protection of Historic Properties," NRC's approval of Duke's DFP constitutes a federal undertaking. The NRC, however, has determined that the approval of the DFP is a type of undertaking that does not have the potential to cause effects on historic properties, assuming such historic properties were present, because the NRC's approval of Duke's DFP will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Therefore, in accordance with 36 CFR 800.3(a)(1), no consultation is required under Section 106 of the NHPA.

Under Section 7 of the Endangered Species Act of 1973, prior to taking a proposed action, a federal agency must determine whether (i) endangered and threatened species or their critical habitats are known to be in the vicinity of the proposed action and if so, whether (ii) the proposed Federal action may affect listed species or critical habitats. If the proposed action may affect listed species or critical habitats, the federal agency is required to consult with the U.S. Fish and Wildlife Service (FWS) and/or the U.S. National Marine Fisheries Service. In accordance with 50 CFR 402.13, the NRC has engaged in informal consultation with the FWS. The NRC has determined that the proposed action is not likely to adversely affect listed species or their critical habitats because the NRC's approval of Duke's DFP will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. The FWS has concurred with the NRC's determination that the proposed action is not likely to adversely affect listed species or critical habitat.

Alternative to the Proposed Action

In addition to the proposed action, the NRC evaluated the no-action alternative. The no-action alternative is to deny Duke's DFP. A denial of a DFP that meets the criteria of 10 CFR 72.30(b) does not support the regulatory intent of the 2011 rulemaking. As noted in the rulemaking EA (ADAMS Accession No. ML090500648), not promulgating the 2011 final rule would have increased the likelihood of additional legacy sites. Thus, denying Duke's DFP, which the NRC has found to meet the criteria of 10 CFR 72.30(b), will undermine the licensee's decommissioning planning. On this basis, the NRC has concluded that the no-action alternative is not a viable alternative.

Agencies and Persons Consulted

The NRC staff consulted with other agencies and parties regarding the environmental impacts of the proposed action. The NRC provided a draft of its EA to the North Carolina Department of Health and Human Services on August 10, 2015, and gave them 30 days to respond. The State never responded. The NRC also consulted with the FWS. The FWS concurred with the NRC's determination that the proposed action is not likely to adversely affect listed species or critical habitat.

III. Finding of No Significant Impact

The NRC staff has determined that the proposed action, the review and approval of the DFP, submitted in accordance with 10 CFR 72.30(b), will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Moreover, the approval of the DFP will not authorize any construction activity, facility modification, or any other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action and as such, that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC staff has determined not to prepare an EIS for the proposed action but will issue this FONSI. In accordance with 10 CFR 51.32(a)(4), the FONSI incorporates the EA by reference.

IV. Availability of Documents

The following documents, related to this Notice, can be found using any of the methods provided in the following table. Instructions for accessing ADAMS were provided under the **ADDRESSES** section of this Notice.

Date	Document	ADAMS Accession No.
December 13, 2012	Submission of MCG decommissioning funding plan	ML12353A033
February 1, 2009	Environmental Assessment for Final Rule—Decommissioning Planning	ML090500648
May 31, 2016	NRC staff's Final EA for the approval of the decommissioning funding plan	ML16144A261

Dated at Rockville, Maryland, this 7th day of June 2016.

For the Nuclear Regulatory Commission.

Bernard H. White IV,

Acting Branch Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–14252 Filed 6–15–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–03; NRC–2016–0114]

Duke Energy; H.B. Robinson Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and a finding of no significant impact (FONSI) for its review and approval of the decommissioning funding plan submitted by Duke Energy Carolinas, LLC (Duke), on December 13, 2012, for the Independent Spent Fuel Storage Installation (ISFSI) at H.B. Robinson Steam Electric Plant, Unit 2 (HBR), located in Darlington County, South Carolina.

DATES: The EA and FONSI referenced in this document are available on June 16, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0114 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0114. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3464; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the "Availability of Documents" section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Richard Baum, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.-0001; telephone: 301–415–0018, email: *Richard.Baum@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of the decommissioning funding plan (DFP) for the H.B. Robinson ISFSI. Duke submitted a DFP for NRC review and approval by letter dated December 13, 2012 (ADAMS Accession No.ML12353A033). The NRC staff has prepared a final EA (ADAMS Accession No. ML16141B198) in support of its review of Duke's DFP, in accordance with the NRC regulations in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," which implement the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). Based on the EA, the NRC staff has determined that approval of the DFP for the H.B. Robinson ISFSI will not significantly affect the quality of the human environment, and, accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not warranted because under 10 CFR 51.22(c)(10) or 10 CFR 51.22 (c)(11) do not apply to the DFP reviews, since the categorical exclusion only apply to license amendments and the 10 CFR 72.30 DFP reviews and approvals are not license amendment.

II. Environmental Assessment

Background

The H.B. Robinson ISFSI is located in Darlington County, South Carolina. Duke is authorized by the NRC, under License Nos. SNM–2502 and SFGL–26, to store spent nuclear fuel at the H.B. Robinson ISFSI.

The NRC requires its licensees to plan for the eventual decommissioning of their licensed facilities prior to license termination. On June 17, 2011 (76 FR 35512), the NRC published a final rule in the **Federal Register** amending its decommissioning planning regulations. The final rule amended the NRC regulation in 10 CFR 72.30, which concerns financial assurance and decommissioning for ISFSIs. This regulation now requires each holder of, or applicant for, a license under 10 CFR part 72 to submit, for NRC review and approval, a DFP. The purpose of the DFP is to demonstrate the licensee's financial assurance, *i.e.*, that funds will be available to decommission the ISFSI. The NRC staff is reviewing the DFP submitted by Duke on December 13, 2012. Specifically, the NRC must determine whether Duke's DFP contains the information required by 10 CFR 72.30(b) and whether Duke has provided reasonable assurance that funds will be available to decommission the ISFSI.

Description of the Proposed Action

The proposed action is the NRC's review and approval of Duke's DFP submitted in accordance with 10 CFR 72.30(b). To approve the DFP, the NRC will evaluate whether the decommissioning cost estimate (DCE) adequately estimates the cost to conduct the required ISFSI decommissioning activities prior to license termination, including identification of the volume of onsite subsurface material containing residual radioactivity that will require remediation to meet the license termination criteria in 10 CFR 20.1402 or 10 CFR 20.1403. The NRC will also evaluate whether the aggregate dollar amount of Duke's financial instruments provide adequate financial assurance to cover the DCE and that the financial instruments meet the criteria of 10 CFR 72.30(e).

The proposed action does not require any changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require any new construction or land disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of Duke's DFP. The scope of the proposed action does not include, and will not result in, the review and approval of any decontamination or decommissioning activity or license termination for the ISFSI or any other part of H.B. Robinson.

Need for the Proposed Action

The proposed action provides a means for Duke to demonstrate that it will have sufficient funding to cover the costs of decommissioning the ISFSI, including the reduction of the residual radioactivity at the ISFSI to the level specified by the applicable NRC license termination regulations concerning release of the property (10 CFR 20.1402 or 10 CFR 20.1403).

Environmental Impacts of the Proposed Action

The NRC's approval of the DFP will not change the scope or nature of the operation of the ISFSI and will not authorize any changes to licensed operations or maintenance activities. The NRC's approval of the DFP will not result in any changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Moreover, the approval of the DFP will not authorize any construction activity or facility modification. Therefore, the NRC staff concludes that the approval of the DFP is a procedural and administrative action that will not result in any significant impact to the environment.

Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), requires federal agencies to consider the effects of their undertakings on historic properties. In accordance with the NHPA implementing regulations at 36 CFR part 800, "Protection of Historic Properties," NRC's approval of Duke's DFP constitutes a federal undertaking. The NRC, however, has determined that the approval of the DFP is a type of undertaking that does not have the potential to cause effects on historic properties, assuming such historic properties were present, because the NRC's approval of Duke's DFP will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Therefore, in accordance with 36 CFR 800.3(a)(1), no consultation is required under Section 106 of the NHPA.

Under Section 7 of the Endangered Species Act of 1973, prior to taking a proposed action, a federal agency must determine whether (i) endangered and threatened species or their critical habitats are known to be in the vicinity of the proposed action and if so, whether (ii) the proposed Federal action may affect listed species or critical habitats. If the proposed action may affect listed species or critical habitats, the federal agency is required to consult with the U.S. Fish and Wildlife Service (FWS) and/or the U.S. National Marine Fisheries Service. In accordance with 50 CFR 402.13, the NRC has engaged in informal consultation with the FWS. The NRC has determined that the proposed action is not likely to adversely affect listed species or their critical habitats because the NRC's approval of Duke's DFP will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. The FWS has concurred with the NRC's determination that the proposed action is not likely to adversely affect listed species or critical habitat.

Alternative to the Proposed Action

In addition to the proposed action, the NRC evaluated the no-action alternative. The no-action alternative is to deny Duke's DFP. A denial of a DFP that meets the criteria of 10 CFR 72.30(b) does not support the regulatory intent of the 2011 rulemaking. As noted in the rulemaking EA (ADAMS Accession No. ML090500648), not promulgating the 2011 final rule would have increased the likelihood of additional legacy sites. Thus, denying Duke's DFP, which the NRC has found to meet the criteria of 10 CFR 72.30(b), will undermine Duke's decommissioning planning. On this basis, the NRC has concluded that the no-action alternative is not a viable alternative.

Agencies and Persons Consulted

The NRC staff consulted with other agencies and parties regarding the environmental impacts of the proposed action. The NRC provided a draft of its EA to the South Carolina Department of Health and Human Services on August 10, 2015, and gave them 30 days to respond. The State never responded. The NRC also consulted with the FWS. The FWS concurred with the NRC's determination that the proposed action is not likely to adversely affect listed species or critical habitat.

III. Finding of No Significant Impact

The NRC staff has determined that the proposed action, the review and approval of the DFP, submitted in accordance with 10 CFR 72.30(b), will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Moreover, the approval of the DFP will not authorize any construction activity, facility modification, or any other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action and as such, that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC staff has determined not to prepare an EIS for the proposed action but will issue this FONSI. In accordance with 10 CFR 51.32(a)(4), the FONSI incorporates the EA by reference.

IV. Availability of Documents

The following documents, related to this Notice, can be found using any of the methods provided in the following table. Instructions for accessing ADAMS were provided under the **ADDRESSES** section of this Notice.

Date	Document	ADAMS Accession No.
December 13, 2012	Submission of Duke's decommissioning funding plan	ML12353A033
February 1, 2009	Environmental Assessment for Final Rule—Decommissioning Planning	ML090500648
May 31, 2016	NRC staff's Final EA for the approval of the decommissioning funding plan	ML16141B198

Dated at Rockville, Maryland, this 7th day of June 2016.

For the Nuclear Regulatory Commission.

Bernard H. White IV,

Acting Branch Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–14258 Filed 6–15–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–06; NRC–2016–0112]

Duke Energy; Brunswick Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and a finding of no significant impact (FONSI) for its review and approval of the decommissioning funding plan submitted by Duke Energy Carolinas, LLC (Duke), on December 13, 2012, for the Independent Spent Fuel Storage Installation (ISFSI) at the Brunswick Steam Electric Plant (BSEP) in Brunswick County, North Carolina.

DATES: The EA and FONSI referenced in this document are available on June 16, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0112 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0112. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the section of this document entitled, Availability of Documents.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Richard Baum, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0018, email: *Richard.Baum@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of the decommissioning funding plan (DFP) for the Brunswick ISFSI. Duke submitted a DFP for NRC review and approval by letter dated December 13, 2012 (ADAMS Accession No. ML12353A033). The NRC staff has prepared a Final EA (ADAMS Accession No. ML16144A362) in support of its review of Duke's DFP, in accordance with the NRC regulations in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," which implement the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). Based on the EA, the NRC staff has determined that approval of the DFP for the Brunswick ISFSI will not significantly affect the quality of the human environment, and, accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not warranted because under 10 CFR 51.22(c)(10) or 10 CFR 51.22 (c)(11) do not apply to the DFP reviews, since the categorical exclusion only apply to license amendments and the 10 CFR 72.30 DFP reviews and approvals are not license amendment.

II. Environmental Assessment

Background

The Brunswick ISFSI is located in Southport, North Carolina. Duke is authorized by NRC, under License No. SFGL–41, to store spent nuclear fuel at the Brunswick ISFSI.

The NRC requires its licensees to plan for the eventual decommissioning of their licensed facilities prior to license termination. On June 17, 2011, the NRC published a final rule in the **Federal Register** amending its decommissioning planning regulations (76 FR 35512). The final rule amended the NRC regulation, 10 CFR 72.30, which concerns financial assurance and decommissioning for ISFSIs. This regulation now requires each holder of, or applicant for, a license under 10 CFR part 72 to submit, for NRC review and approval, a DFP. The purpose of the DFP is to demonstrate the licensee's financial assurance, *i.e.*, that funds will be available to decommission the ISFSI. The NRC staff is reviewing the DFP submitted by Duke on December 13, 2012. Specifically, the NRC must determine whether Duke's DFP contains the information required by 10 CFR 72.30(b) and whether Duke has provided reasonable assurance that funds will be available to decommission the ISFSI.

Description of the Proposed Action

The proposed action is the NRC's review and approval of Duke's DFP submitted in accordance with 10 CFR 72.30(b). To approve the DFP, the NRC will evaluate whether the decommissioning cost estimate (DCE) adequately estimates the cost to conduct the required ISFSI decommissioning activities prior to license termination, including identification of the volume of onsite subsurface material containing residual radioactivity that will require remediation to meet the license termination criteria in 10 CFR 20.1402 or 10 CFR 20.1403. NRC will also evaluate whether the aggregate dollar amount of Duke's financial instruments provide adequate financial assurance to cover the DCE and that the financial instruments meet the criteria of 10 CFR 72.30(e).

The proposed action does not require any changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require any new construction or land disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of the Duke's DFP. The scope of the proposed action does not include, and will not result in, the review and approval of any decontamination or decommissioning activity or license termination for the ISFSI or any other part of BSEP.

Need for the Proposed Action

The proposed action provides a means for Duke to demonstrate that it will have sufficient funding to cover the costs of decommissioning the ISFSI, including the reduction of the residual radioactivity at the ISFSI to the level specified by the applicable NRC license termination regulations concerning release of the property (10 CFR 20.1402 or 10 CFR 20.1403).

Environmental Impacts of the Proposed Action

The NRC's approval of the DFP will not change the scope or nature of the operation of the ISFSI and will not authorize any changes to licensed operations or maintenance activities. The NRC's approval of the DFP will not result in any changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Moreover, the approval of the DFP will not authorize any construction activity or facility modification. Therefore, the NRC staff concludes that the approval of the DFP is a procedural and administrative action that will not result in any significant impact to the environment.

Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), requires federal agencies to consider the effects of their undertakings on historic properties. In accordance with the NHPA implementing regulations at 36 CFR part 800, "Protection of Historic Properties," NRC's approval of Duke's DFP constitutes a federal undertaking. The NRC, however, has determined that the approval of the DFP is a type of undertaking that does not have the potential to cause effects on historic properties, assuming such historic properties were present, because the NRC's approval of Duke's DFP will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Therefore, in accordance with 36 CFR 800.3(a)(1), no consultation is required under Section 106 of the NHPA.

Under Section 7 of the Endangered Species Act of 1973, prior to taking a proposed action, a federal agency must determine whether (i) endangered and threatened species or their critical habitats are known to be in the vicinity of the proposed action and if so, whether (ii) the proposed Federal action may affect listed species or critical habitats. If the proposed action may affect listed species or critical habitats, the federal agency is required to consult with the U.S. Fish and Wildlife Service (FWS) and/or the U.S. National Marine Fisheries Service. In accordance with 50 CFR 402.13, the NRC has engaged in informal consultation with the FWS. The NRC has determined that the proposed action is not likely to adversely affect listed species or their critical habitats because the NRC's approval of Duke's DFP will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. The FWS has concurred with the NRC's determination that the proposed action is not likely to adversely affect listed species or critical habitat.

Alternative to the Proposed Action

In addition to the proposed action, the NRC evaluated the no-action alternative. The no-action alternative is to deny Duke's DFP. A denial of a DFP that meets the criteria of 10 CFR 72.30(b) does not support the regulatory intent of the 2011 rulemaking. As noted in the rulemaking EA (ADAMS Accession No. ML090500648), not promulgating the 2011 final rule would have increased the likelihood of additional legacy sites. Thus, denying the licensee's DFP, which the NRC has found to meet the criteria of 10 CFR 72.30(b), will undermine the licensee's decommissioning planning. On this basis, the NRC has concluded that the no-action alternative is not a viable alternative.

Agencies and Persons Consulted

The NRC staff consulted with other agencies and parties regarding the environmental impacts of the proposed action. The NRC provided a draft of its EA to the North Carolina Department of Health and Human Services on August 10, 2015, and gave them 30 days to respond. The State never responded. The NRC also consulted with the FWS. The FWS concurred with the NRC's determination that the proposed action is not likely to adversely affect listed species or critical habitat.

III. Finding of No Significant Impact

The NRC staff has determined that the proposed action, the review and approval of the DFP, submitted in accordance with 10 CFR 72.30(b), will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Moreover, the approval of the DFP will not authorize any construction activity, facility modification, or any other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action and as such, that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC staff has determined not to prepare an EIS for the proposed action but will issue this FONSI. In accordance with 10 CFR 51.32(a)(4), the FONSI incorporates the EA by reference.

IV. Availability of Documents

The following documents, related to this Notice, can be found using any of the methods provided in the following table. Instructions for accessing ADAMS were provided under the **ADDRESSES** section of this Notice.

Date	Document	ADAMS Accession No.
December 13, 2012	Submission of Duke's decommissioning funding plan	ML12353A033
February 1, 2009	Environmental Assessment for Final Rule—Decommissioning Planning	ML090500648
May 31, 2016	NRC staff's Final EA for the approval of the decommissioning funding plan	ML16144A362

Dated at Rockville, Maryland, this 7th day of June 2016.

For the Nuclear Regulatory Commission.

Bernard H. White IV,

Acting Branch Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–14253 Filed 6–15–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–45; NRC–2016–0113]

Duke Energy; Catawba Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and a finding of no significant impact (FONSI) for its review and approval of the decommissioning funding plan submitted by Duke Energy Carolinas, LLC (Duke), on December 13, 2012, for the Independent Spent Fuel Storage Installation (ISFSI) at Catawba Nuclear Station (CNS), located in York County, South Carolina.

DATES: The EA and FONSI referenced in this document are available on June 16, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0113 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0113. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the "Availability of Documents" section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Richard Baum, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0018, email: *Richard.Baum@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of the decommissioning funding plan (DFP) for the Catawba ISFSI. Duke submitted a DFP for NRC review and approval by letter dated December 13, 2012 (ADAMS Accession No. ML12353A033). The NRC staff has prepared a final EA (ADAMS Accession No. ML16144A026) in support of its review of Duke's DFP, in accordance with the NRC's regulations in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," which implement the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). Based on the EA, the NRC staff has determined that approval of Duke's DFP for the Catawba ISFSI will not significantly affect the quality of the human environment, and, accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not warranted because under 10 CFR 51.22(c)(10) or 10 CFR 51.22(c)(11) do not apply to the DFP reviews, since the categorical exclusion only apply to license amendments and the 10 CFR 72.30 DFP reviews and approvals are not license amendment.

II. Environmental Assessment

Background

The Catawba ISFSI is located in York County, South Carolina is authorized by the NRC, under License No. SFGL–31, to store spent nuclear fuel at the Catawba ISFSI.

The NRC requires its licensees to plan for the eventual decommissioning of their licensed facilities prior to license termination. On June 17, 2011 (76 FR 35512), the NRC published a final rule in the **Federal Register** amending its decommissioning planning regulations. The final rule amended the NRC regulation in 10 CFR 72.30, which concerns financial assurance and decommissioning for ISFSIs. This regulation now requires each holder of, or applicant for, a license under 10 CFR part 72 to submit, for NRC review and approval, a DFP. The purpose of the DFP is to demonstrate the licensee's financial assurance, *i.e.*, that funds will be available to decommission the ISFSI. The NRC staff is reviewing the DFP submitted by Duke on December 13, 2012. Specifically, the NRC must determine whether Duke's DFP contains the information required by 10 CFR 72.30(b) and whether Duke has provided reasonable assurance that funds will be available to decommission the ISFSI.

Description of the Proposed Action

The proposed action is the NRC's review and approval of Duke's DFP submitted in accordance with 10 CFR 72.30(b). To approve the DFP, the NRC will evaluate whether the decommissioning cost estimate (DCE) adequately estimates the cost to conduct the required ISFSI decommissioning activities prior to license termination, including identification of the volume of onsite subsurface material containing residual radioactivity that will require remediation to meet the license termination criteria in 10 CFR 20.1402 or 10 CFR 20.1403. The NRC will also evaluate whether the aggregate dollar amount of Duke's financial instruments provide adequate financial assurance to cover the DCE and that the financial instruments meet the criteria of 10 CFR 72.30(e).

The proposed action does not require any changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require any new construction or land disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of Duke's DFP. The scope of the proposed action does not include, and will not result in, the review and approval of any decontamination or decommissioning activity or license termination for the ISFSI, or any other part of Catawba.

Need for the Proposed Action

The proposed action provides a means for Duke to demonstrate that it will have sufficient funding to cover the costs of decommissioning the ISFSI, including the reduction of the residual radioactivity at the ISFSI to the level specified by the applicable NRC license termination regulations concerning release of the property (10 CFR 20.1402 or 10 CFR 20.1403).

Environmental Impacts of the Proposed Action

The NRC's approval of the DFP will not change the scope or nature of the operation of the ISFSI and will not authorize any changes to licensed operations or maintenance activities. The NRC's approval of the DFP will not result in any changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Moreover, the approval of the DFP will not authorize any construction activity or facility modification. Therefore, the NRC staff concludes that the approval of the DFP is a procedural and administrative action that will not result in any significant impact to the environment.

Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), requires Federal agencies to consider the effects of their undertakings on historic properties. In accordance with the NHPA implementing regulations at 36 CFR part 800, "Protection of Historic Properties," NRC's approval of Duke's DFP constitutes a federal undertaking. The NRC, however, has determined that the approval of the DFP is a type of undertaking that does not have the potential to cause effects on historic properties, assuming such historic properties were present, because the NRC's approval of Duke's DFP will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Therefore, in accordance with 36 CFR 800.3(a)(1), no consultation is required under Section 106 of the NHPA.

Under Section 7 of the Endangered Species Act of 1973, prior to taking a proposed action, a federal agency must determine whether (i) endangered and threatened species or their critical habitats are known to be in the vicinity of the proposed action and if so, whether (ii) the proposed Federal action may affect listed species or critical habitats. If the proposed action may affect listed species or critical habitats, the federal agency is required to consult with the U.S. Fish and Wildlife Service (FWS) and/or the U.S. National Marine Fisheries Service. In accordance with 50 CFR 402.13, the NRC has engaged in informal consultation with the FWS. The NRC has determined that the proposed action is not likely to adversely affect listed species or their critical habitats because the NRC's approval of Duke's DFP will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. The FWS has concurred with the NRC's determination that the proposed action is not likely to adversely affect listed species or critical habitat.

Alternative to the Proposed Action

In addition to the proposed action, the NRC evaluated the no-action alternative. The no-action alternative is to deny Duke's DFP. A denial of a DFP that meets the criteria of 10 CFR 72.30(b) does not support the regulatory intent of the 2011 rulemaking. As noted in the rulemaking EA (ADAMS Accession No. ML090500648), not promulgating the 2011 final rule would have increased the likelihood of additional legacy sites. Thus, denying Duke's DFP, which the NRC has found to meet the criteria of 10 CFR 72.30(b), will undermine Duke's decommissioning planning. On this basis, the NRC has concluded that the no-action alternative is not a viable alternative.

Agencies and Persons Consulted

The NRC staff consulted with other agencies and parties regarding the environmental impacts of the proposed action. The NRC provided a draft of its EA to the South Carolina Department of Health and Human Services on August 10, 2015, and gave them 30 days to respond. The State never responded. The NRC also consulted with the FWS. The FWS concurred with the NRC's determination that the proposed action is not likely to adversely affect listed species or critical habitat.

III. Finding of No Significant Impact

The NRC staff has determined that the proposed action, the review and approval of the DFP, submitted in accordance with 10 CFR 72.30(b), will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Moreover, the approval of the DFP will not authorize any construction activity, facility modification, or any other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action and as such, that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC staff has determined not to prepare an EIS for the proposed action but will issue this FONSI. In accordance with 10 CFR 51.32(a)(4), the FONSI incorporates the EA by reference.

IV. Availability of Documents

The following documents, related to this Notice, can be found using any of the methods provided in the following table. Instructions for accessing ADAMS were provided under the **ADDRESSES** section of this Notice.

Date	Document	ADAMS Accession No.
December 13, 2012	Submission of Duke decommissioning funding plan	ML12353A033
February 1, 2009	Environmental Assessment for Final Rule—Decommissioning Planning	ML090500648
May 31, 2016	NRC staff's Final EA for the approval of the decommissioning funding plan	ML16144A026

Dated at Rockville, Maryland, this 7th day of June 2016.

For the Nuclear Regulatory Commission.

Bernard H. White IV,

Acting Branch Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–14261 Filed 6–15–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–04; NRC–2016–0110]

Duke Energy; Oconee Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and a finding of no significant impact (FONSI) for its review and approval of the decommissioning funding plan submitted by Duke Energy Carolinas, LLC (Duke), on December 13, 2012, for the Independent Spent Fuel Storage Installation (ISFSI) at Oconee Nuclear Station in Oconee County, South Carolina.

DATES: The EA and FONSI referenced in this document are available on June 16, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0110 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0110. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the section of this document entitled, Availability of Documents.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Richard Baum, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0018, email: *Richard.Baum@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of the decommissioning funding plan (DFP) for the Oconee ISFSI. Duke submitted a DFP for NRC review and approval by letter dated December 13, 2012 (ADAMS Accession No. ML12353A033). The NRC staff has prepared a final EA (ADAMS Accession No. ML16141A277) in support of its review of Duke's DFP, in accordance with the NRC regulations in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," which implement the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). Based on the EA, the NRC staff has determined that approval of the DFP for the Oconee ISFSI will not significantly affect the quality of the human environment, and, accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not warranted because under 10 CFR 51.22(c)(10) or 10 CFR 51.22(c)(11) do not apply to the DFP reviews, since the categorical exclusion only apply to license amendments and the 10 CFR 72.30 DFP reviews and approvals are not license amendment.

II. Environmental Assessment

Background

The Oconee ISFSI is located in Oconee County, South Carolina. Duke is authorized by the NRC, under License No. SFGL–06 and SNM–2503 to store spent nuclear fuel at the Oconee ISFSI.

The NRC requires its licensees to plan for the eventual decommissioning of their licensed facilities prior to license termination. On June 17, 2011, the NRC published a final rule in the **Federal Register** amending its decommissioning planning regulations (76 FR 35512). The final rule amended the NRC regulation, 10 CFR 72.30, which concerns financial assurance and decommissioning for ISFSIs. This regulation now requires each holder of, or applicant for, a license under 10 CFR part 72 to submit, for NRC review and approval, a DFP. The purpose of the DFP is to demonstrate the licensee's financial assurance, *i.e.,* that funds will be available to decommission the ISFSI. The NRC staff is reviewing the DFP submitted by Duke on December 13, 2012. Specifically, the NRC must determine whether Duke's DFP contains the information required by 10 CFR 72.30(b) and whether Duke has provided reasonable assurance that funds will be available to decommission the ISFSI.

Description of the Proposed Action

The proposed action is the NRC's review and approval of Duke's DFP submitted in accordance with 10 CFR 72.30(b). To approve the DFP, the NRC will evaluate whether the decommissioning cost estimate (DCE) adequately estimates the cost to conduct the required ISFSI decommissioning activities prior to license termination, including identification of the volume of onsite subsurface material containing residual radioactivity that will require remediation to meet the license termination criteria in 10 CFR 20.1402 or 10 CFR 20.1403. NRC will also evaluate whether the aggregate dollar amount of Duke's financial instruments provide adequate financial assurance to cover the DCE and that the financial instruments meet the criteria of 10 CFR 72.30(e).

The proposed action does not require any changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require any new construction or land disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of the Duke's DFP. The scope of the proposed action does not include, and will not result in, the review and approval of any decontamination or decommissioning activity or license termination for the ISFSI or any other part of Oconee Nuclear Station.

Need for the Proposed Action

The proposed action provides a means for Duke to demonstrate that it will have sufficient funding to cover the costs of decommissioning the ISFSI, including the reduction of the residual radioactivity at the ISFSI to the level specified by the applicable NRC license termination regulations concerning release of the property (10 CFR 20.1402 or 10 CFR 20.1403).

Environmental Impacts of the Proposed Action

The NRC's approval of the DFP will not change the scope or nature of the operation of the ISFSI and will not authorize any changes to licensed operations or maintenance activities. The NRC's approval of the DFP will not result in any changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Moreover, the approval of the DFP will not authorize any construction activity or facility modification. Therefore, the NRC staff concludes that the approval of the DFP is a procedural and administrative action that will not result in any significant impact to the environment.

Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), requires federal agencies to consider the effects of their undertakings on historic properties. In accordance with the NHPA implementing regulations at 36 CFR part 800, "Protection of Historic Properties," NRC's approval of Duke's DFP constitutes a federal undertaking. The NRC, however, has determined that the approval of the DFP is a type of undertaking that does not have the potential to cause effects on historic properties, assuming such historic properties were present, because the NRC's approval of Duke's DFP will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Therefore, in accordance with 36 CFR 800.3(a)(1), no consultation is required under Section 106 of the NHPA.

Under Section 7 of the Endangered Species Act of 1973, prior to taking a proposed action, a federal agency must determine whether (i) endangered and threatened species or their critical habitats are known to be in the vicinity of the proposed action and if so, whether (ii) the proposed Federal action may affect listed species or critical habitats. If the proposed action may affect listed species or critical habitats, the federal agency is required to consult with the U.S. Fish and Wildlife Service (FWS) and/or the U.S. National Marine Fisheries Service. In accordance with 50 CFR 402.13, the NRC has engaged in informal consultation with the FWS. The NRC has determined that the proposed action is not likely to adversely affect listed species or their critical habitats because the NRC's approval of Duke's DFP will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. The FWS has concurred with the NRC's determination that the proposed action is not likely to adversely affect listed species or critical habitat.

Alternative to the Proposed Action

In addition to the proposed action, the NRC evaluated the no-action alternative. The no-action alternative is to deny Duke's DFP. A denial of a DFP that meets the criteria of 10 CFR 72.30(b) does not support the regulatory intent of the 2011 rulemaking. As noted in the rulemaking EA (ADAMS Accession No. ML090500648), not promulgating the 2011 final rule would have increased the likelihood of additional legacy sites. Thus, denying Duke's DFP, which the NRC has found to meet the criteria of 10 CFR 72.30(b), will undermine the licensee's decommissioning planning. On this basis, the NRC has concluded that the no-action alternative is not a viable alternative.

Agencies and Persons Consulted

The NRC staff consulted with other agencies and parties regarding the environmental impacts of the proposed action. The NRC provided a draft of its EA to the South Carolina Department of Health and Human Services on August 10, 2015, and gave them 30 days to respond. The State never responded. The NRC also consulted with the FWS. The FWS concurred with the NRC's determination that the proposed action is not likely to adversely affect listed species or critical habitat.

III. Finding of No Significant Impact

The NRC staff has determined that the proposed action, the review and approval of the DFP, submitted in accordance with 10 CFR 72.30(b), will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Moreover, the approval of the DFP will not authorize any construction activity, facility modification, or any other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action and as such, that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC staff has determined not to prepare an EIS for the proposed action but will issue this FONSI. In accordance with 10 CFR 51.32(a)(4), the FONSI incorporates the EA by reference.

IV. Availability of Documents

The following documents, related to this Notice, can be found using any of the methods provided in the following table. Instructions for accessing ADAMS were provided under the **ADDRESSES** section of this Notice.

Date	Document	ADAMS Accession No.
December 13, 2012	Submission of Duke's decommissioning funding plan	ML12353A033

Date	Document	ADAMS Accession No.
February 1, 2009	Environmental Assessment for Final Rule—Decommissioning Planning	ML090500648
May 31, 2016	NRC staff's Final EA for the approval of the decommissioning funding plan	ML16141A277

Dated at Rockville, Maryland, this 7th day of June 2016.

For the Nuclear Regulatory Commission.

Bernard H. White IV,

Acting Branch Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–14262 Filed 6–15–16; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Submit comments on or before August 15, 2016.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA/Privacy Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION:

Title: Health History Form.

OMB Control Number: 0420–0510.

Type of Request: Revison.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Respondents: Potential and current volunteers.

Burdent to the Public:

a. Estimated number of respondents: 23,000.

b. Estimated average burden per response: 45 minutes.

c. Frequency of response: One Time.

d. Annual reporting burden: 17,250 hours.

General Description of Collection: The information collected is required for consideration for Peace Corps Volunteer service. The information in the Health History Form, will be used by the Peace Corps Office of Medical Services to determine whether an Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer and complete a tour of service without undue disruption due to health problems and, if so, to establish the level of medical and programmatic support, if any, that may be required to reasonably accommodate the Applicant.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on June 9, 2016.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2016–14214 Filed 6–15–16; 8:45 am]

BILLING CODE 6051–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–152 and CP2016–196; CP2016–195; CP2016–197; CP2016–198]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 20, 2016 (Comment due date applies to all Docket Nos. listed above).

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service has filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The requests(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39

CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2016–152 and CP2016–196; *Filing Title:* Request of the United States Postal Service to Add Global Plus 3 to the Competitive Products List and Notice of Filing a Global Plus 3 Contract Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 10, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Natalie R. Ward; *Comments Due:* June 20, 2016.

2. *Docket No(s).:* CP2016–195; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 10, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30–.35; *Public Representative:* Lyudmila Y. Bzhilyanskaya; *Comments Due:* June 20, 2016.

3. *Docket No(s).:* CP2016–197; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 10, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30–.35; *Public Representative:* Lyudmila Y. Bzhilyanskaya; *Comments Due:* June 20, 2016.

4. *Docket No(s).:* CP2016–198; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 10, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30–.35; *Public Representative:* Cassie D'Souza; *Comments Due:* June 20, 2016.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–14255 Filed 6–15–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

International Product Change—Global Plus 3 Contracts

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add the Global Plus 3 product to the Competitive Products List.

DATES: *Effective date:* June 16, 2016.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642, on June 10, 2016, it filed with the Postal Regulatory Commission a Request of the United States Postal Service to add Global Plus 3 to the Competitive Product List. Documents are available at *www.prc.gov,* Docket Nos. MC2016–152 and CP2016–196.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–14213 Filed 6–15–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–4418/803–00227]

Angelo, Gordon & Co., L.P.; Notice of Application

June 10, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an exemptive order under Section 206A of the Investment Advisers Act of 1940 (the "Advisers Act") and Rule 206(4)–5(e).

APPLICANT: Angelo, Gordon & Co., L.P. ("Applicant" or "Adviser").

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 206A of the Advisers Act and rule 206(4)–5(e) from rule 206(4)–5(a)(1) under the Advisers Act.

SUMMARY OF APPLICATION: Applicant requests that the Commission issue an order under section 206A of the Advisers Act and rule 206(4)–5(e) exempting it from rule 206(4)–5(a)(1) under the Advisers Act to permit Applicant to receive compensation from a government entity for investment advisory services provided to the government entity within the two-year period following a contribution by an individual who subsequently became a covered associate of the Applicant to an official of the government entity.

FILING DATES: The application was filed on December 19, 2014, and amended and restated applications were filed on May 26, 2015 and May 2, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 5, 2016, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Advisers Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicant: Angelo, Gordon & Co., L.P., c/o D. Forest Wolfe, Esq., 245 Park Avenue, New York, NY 10167.

FOR FURTHER INFORMATION CONTACT: Vanessa M. Meeks, Senior Counsel, or Melissa R. Harke, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site at *http://www.sec.gov/rules/iareleases.shtml* or by calling (202) 551–8090.

Applicant's Representations

1. Applicant is a Delaware limited partnership registered with the Commission as an investment adviser under the Advisers Act. Applicant provides discretionary investment advisory services to private funds (the "Funds"). Each of these Funds is a covered investment pool as defined in Rule 206(4)–5(f)(3)(ii). One of the private funds for which the Applicant acts as investment adviser is AG Core Plus Realty Fund IV, L.P. ("Core Plus IV"), a fund excluded from the definition of investment company by Section 3(c)(7) of the Investment Company Act of 1940.

2. The individual who made the campaign contribution that triggered the two-year compensation ban (the

"Contribution") is Christopher Williams (the "Contributor"). The Contributor was hired by the Adviser on September 29, 2014 to serve as a senior investment professional at the Adviser and co-manager of a new investment strategy for the Adviser. The Contributor made the Contribution at a time when he was not working for an investment adviser and almost a year before he would begin working for the Adviser (indeed, months before he entered into employment discussions with the Adviser).

3. An investor in the Funds is a public pension plan identified as a government entity, as defined in Rule 206(4)–5(f)(5)(ii), with respect to the State of Illinois (the "Client").

4. The recipient of the Contribution was Bruce Rauner (the "Recipient"), who was a private citizen then running for Governor of Illinois. The investment decisions for the Client, including the hiring of an investment adviser, are overseen by a nine-member board of trustees, with five gubernatorial appointments, two other state elected officials sitting ex officio, and the chairs of two retirement boards sitting ex officio. Due to the Governor's power of appointment, a candidate for Governor such as the Recipient is an "official" of the Client. The Recipient was elected governor of Illinois on November 4, 2014 and took office on January 12, 2015. The Recipient appointed five members between January 30, 2015 and June 5, 2015.

5. The Contribution that triggered rule 206(4)–5's prohibition on compensation under rule 206(4)–5(a)(1) was given on November 7, 2013 for the amount of $892.17 as an in-kind contribution to Citizens for Rauner. The Contribution consisted of payments to two vendors to defray expenses of a small meet-and-greet reception (the "Reception") for the Rauner campaign. The Contributor's first and only meeting with Bruce Rauner consisted of a 5 to 10 minute conversation at the Reception on November 7, 2013. The Contributor did not seek out or initiate contact with the Recipient. At the time of the Contribution, the Contributor had no intention of soliciting investment advisory business from the Client or any other government entity of which Rauner was an official. At no time did any employees of the Adviser other than the Contributor have any knowledge that the Contribution had been made prior to its discovery by the Adviser in October 2014 as a result of its routine new employee onboarding procedures.

6. The Client's contacts with the Adviser date back to at least 2001, before the Contributor was employed by the Adviser. On September 25, 2014, the Client committed to a substantial investment in one of the Funds, Core Plus IV, a Fund that does not participate in the strategy for which the Contributor is a co-manager. A procedure has been established to segregate any compensation (including carried interest and management fees) attributable to the Client's investment in Core Plus IV and withhold them from the Adviser. The Contributor has no role with respect to the Client. The Client is not considered a prospective investor for the investment strategy for which he is a co-manager. The Contributor has had no contact with any representative of the Client, and no contact with any member of the Client's board.

7. The Contribution was discovered by the Adviser's compliance department in the course of new employee onboarding that included review of a political contribution questionnaire on which the Contributor disclosed the Contribution. Within one week of discovering the Contribution on October 3, 2014, the Adviser and Contributor obtained the Recipient's agreement to return the full Contribution. A check refunding the full amount of the Contribution was received on October 24, 2014. The Adviser promptly notified the Client of the Contribution and resulting two-year prohibition on compensation absent exemptive relief from the Commission. The Adviser told the Client that fees charged to the Client's capital account in the Core Plus IV would be placed in escrow and that, absent exemptive relief from the Commission, those fees would be refunded and no additional fees would be charged to the Client for the duration of the two-year period.

8. The Adviser's Pay-to-Play Policies and Procedures ("Policy") were adopted and implemented before the Contribution was made. The Policy was initially adopted in May 2009, more than a year before rule 206(4)–5 (the "Rule") was adopted. All contributions to federal, state and local office incumbents and candidates are subject to pre-clearance, not post-contribution reporting, by employees under the Policy. There is no de minimis exception from pre-clearance for small contributions to these state and local officials. All employees of the Adviser are subject to the Policy. In June 2010—before the Rule was adopted—the Adviser instituted a Political Contribution Questionnaire that all new employees of the Adviser are required to complete regarding all political contributions of any size at any level for the three year period before beginning employment.

Applicant's Legal Analysis

1. Rule 206(4)–5(a)(1) under the Advisers Act prohibits a registered investment adviser from providing investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment adviser. The Client is a "government entity," as defined in rule 206(4)–5(f)(5), the Contributor is a "covered associate" as defined in rule 206(4)–5(f)(2), and the Recipient is an "official" as defined in rule 206(4)–5(f)(6). Rule 206(4)–5(c) provides that when a government entity invests in a covered investment pool, the investment adviser to that covered investment pool is treated as providing advisory services directly to the government entity. The Funds are "covered investment pools," as defined in rule 206(4)–5(f)(3)(ii).

2. Section 206A of the Advisers Act grants the Commission the authority to "conditionally or unconditionally exempt any person or transaction . . . from any provision or provisions of [the Advisers Act] or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Advisers Act]."

3. Rule 206(4)–5(e) provides that the Commission may exempt an investment adviser from the prohibition under Rule 206(4)–5(a)(1) upon consideration of the factors listed below, among others:

(1) Whether the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act;

(2) Whether the investment adviser: (i) Before the contribution resulting in the prohibition was made, adopted and implemented policies and procedures reasonably designed to prevent violations of the rule; and (ii) prior to or at the time the contribution which resulted in such prohibition was made, had no actual knowledge of the contribution; and (iii) after learning of the contribution: (A) Has taken all available steps to cause the contributor involved in making the contribution which resulted in such prohibition to obtain a return of the contribution; and (B) has taken such other remedial or preventive measures as may be appropriate under the circumstances;

(3) Whether, at the time of the contribution, the contributor was a

covered associate or otherwise an employee of the investment adviser, or was seeking such employment;

(4) The timing and amount of the contribution which resulted in the prohibition;

(5) The nature of the election (*e.g.*, federal, state or local); and

(6) The contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

4. Applicant requests an order pursuant to section 206A and rule 206(4)–5(e), exempting it from the two-year prohibition on compensation imposed by rule 206(4)–5(a)(1) with respect to investment advisory services provided to the Client within the two-year period following the Contribution.

5. Applicant submits that the exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act. Applicant further submits that the other factors set forth in rule 206(4)–5(e) similarly weigh in favor of granting an exemption to the Applicant to avoid consequences disproportionate to the violation.

6. Applicant contends that given the nature of the Rule violation and the lack of any evidence that the Adviser or the Contributor intended to, or actually did, interfere with the Client's merit-based process for the selection or retention of advisory services, the interests of the Client are best served by allowing the Adviser and the Client to continue their relationship uninterrupted. Applicant states that causing the Adviser to serve without compensation for the remainder of the two year period could result in a financial loss that is more than 300 times the amount of the Contribution. Applicant suggests that the policy underlying the Rule is served by ensuring that no improper influence is exercised over investment decisions by governmental entities as a result of campaign contributions and not by withholding compensation as a result of unintentional violations.

7. Applicant represents that it had adopted and implemented the Policy which is fully compliant with, and more rigorous than, the Rule's requirements and that it had also implemented a political contribution questionnaire for all new employees, and performed compliance testing that included random searches of campaign contribution databases for the names of employees. Applicant notes that it was this questionnaire that was effective in identifying the Contribution.

8. Applicant asserts that actual knowledge of the Contribution at the time of its making cannot be imputed to the Adviser, given that the Contributor was not an employee of the Adviser and had not yet participated in any of the discussions that would ultimately lead to his employment with the Adviser. Applicant represents that at no time did any employees of the Adviser other than the Contributor have any knowledge that the Contribution had been made prior to its discovery by the Adviser in October 2014 as part of its standard employee onboarding process.

9. Applicant asserts that after learning of the Contribution, the Adviser and the Contributor took all available steps to obtain a return of the Contribution and implement additional measures to prevent a future error, including modification of the new employee onboarding process to require the completion of the political contribution questionnaire before the Adviser's final decision to hire a new employee.

10. Applicant states that it informed the Contributor that he could have no contact with any representative of the Client other than potentially making substantive presentations to the Client's representatives and consultants about the investment strategy the Contributor manages in the event the Client requested a presentation of that strategy. The Contributor was directed to maintain a log of such interactions in accordance with the retention requirements set forth in Rule 204–2(e). Applicant further states that the Contributor ultimately had no contact with any representative of the Client and no contact with any member of the Client's board.

11. Applicant notes that it has had ongoing contacts with the Client that predate the Contributor's employment with the Adviser, and that the Contribution was consistent with the political affiliation of the Contributor and his wife. Applicant asserts that the Contributor also had a legitimate interest in the outcome of the campaign given that he and his family live in Illinois. Applicant also asserts that the Contributor's action in making a contribution that would later trigger a ban resulted from his lack of knowledge about the Rule's look-back provisions and, thus, his failure to appreciate the fact that the Contribution might impact potential future activities for an investment advisory firm.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14211 Filed 6–15–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78035; File No. SR–BatsBYX–2016–13]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.23, Opening Process

June 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2016, Bats BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.23, Opening Process, to await a two-sided quotation from the listing exchange prior to re-opening a security for trading following a halt, suspension, or pause in trading.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.23, Opening Process, to await a two-sided quotation from the listing exchange prior to re-opening a security for trading following a halt, suspension, or pause in trading.

Exchange Rule 11.23 describes the Exchange's current Opening and Re-Opening Process. Subparagraph (e) to Rule 11.23 states that while a security is subject to a halt, suspension, or pause in trading, the Exchange will accept orders for queuing prior to the resumption of trading in the security for participation in the Re-Opening Process. Subparagraph (a) to Rule 11.23 states that, prior to the beginning of the Regular Trading Hours, Users[5] who wish to participate in the Opening Process may enter orders to buy or sell.[6] Subparagraph (a)(2) to Rule 11.23 provides that, with certain exceptions,[7] all orders with a time-in-force instruction of Regular Hours Only may participate in the Opening Process. Subparagraph (e)(1) to Rule 11.23 states that the Re-Opening Process will occur in the same manner described in Rule 11.23(a)(2) and (b) described above,[8] also with certain exceptions.[9]

Subparagraph (e)(1) to Exchange Rule 11.23 also sets forth the process by which the System sets the price of the Re-Opening Process. Currently, the System[10] sets the price of the Re-Opening Process at the midpoint of the: (i) First NBBO subsequent to the first reported trade on the listing exchange following the resumption of trading after a halt, suspension, or pause; or (ii) NBBO when the first two-sided quotation is published by the listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

The Exchange proposes to amend subparagraph (e)(1) to Rule 11.23 to now await a two-sided quotation from the listing exchange prior to opening a security for trading. As amended, subparagraph (e)(1) to Rule 11.23 would state that the System would set the price of the Re-Opening Process at the midpoint of the first NBBO subsequent to the first reported trade and first two-sided quotation on the listing exchange following the resumption of trading after a halt, suspension, or pause. The Exchange will utilize the current NBBO to calculate the security's re-opening price once a trade and two-sided quotation are received from the listing exchange, regardless of the order in which the trade or quotation are received. The Exchange believes the proposed rule change will enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so would result in a re-opening price that more closely reflects the market prices and conditions for that security. Under subparagraph (e)(1) to Rule 11.23, the Exchange will continue to alternatively set the price of the Re-Opening Process at the midpoint of the NBBO when the first two-sided quotation is published by the listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will promote just and equitable principles of trade, removes impediments to, and perfect the mechanism of, a free and open market and a national market system because it enables the System to execute the Re-Opening Process at a price that is objectively established by the market for the security. The proposal would enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so would result in a re-opening price that more closely reflect the market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change promotes just and equitable principles of trade because it ensures a midpoint price that the Exchange believes would accurately reflect the market for the security.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will enable the Exchange to incorporate the listing market's quotation into its calculation of the midpoint of the NBBO, resulting in a re-opening price that would more closely reflect the opening market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change will promote competition by enhancing the quality of the Exchange's opening process.

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[5] *See* Exchange Rule 1.5(cc).

[6] Orders cancelled prior to the Opening Process will not participate in the Opening Process.

[7] The following order types and instruction may not participate in the opening process: BYX Post Only Orders, ISOs not modified by Rule 11.23(a)(1) above, and Minimum Quantity Orders. *See* Exchange Rule 11.23(a)(2). Limit orders with a Reserve Quantity may participate to the full extent of their displayed size and Reserve Quantity. *Id.* Discretionary Orders may participate only up to their ranked price for buy orders or down to their ranked price for sell orders. *Id.* The discretionary range of such orders will not be eligible for participation in the Opening Process. *Id.* All Pegged Orders and Mid-Point Peg Orders, as defined in Rule 11.9(c)(8) and (9), will be eligible for execution in the Opening Process based on their pegged prices. *Id.*

[8] Subparagraph (b) to Rule 11.23 states that the Exchange will open by performing the Opening Process in which the System will attempt to match buy and sell orders that are executable at the midpoint of the National Best Bid and Offer ("NBBO"). Furthermore, subparagraph (b) of Rule 11.23 also states that all orders executable at the midpoint of the NBBO will continue to be processed in time sequence, beginning with the order with the oldest time stamp. Matches occur until there are no remaining contra-side orders or there is an imbalance of orders. An imbalance of orders may result in orders that cannot be executed in whole or in part. Any unexecuted orders may then be placed by the System on the BYX Book, cancelled, executed, or routed to away Trading Centers in accordance with the Users' instructions pursuant to Exchange Rule 11.13(a)(2).

[9] Orders without a time-in-force instruction of Regular Hours Only are eligible to participate in the Re-Opening Process, but IOC, FOK, BYX Post Only Orders, and Minimum Quantity Orders will be cancelled or rejected, as applicable, and any ISO that is not IOC or FOK will be converted into a non-ISO and be queued for participation in the Re-Opening Process. *See* Exchange Rule 11.23(e)(1).

[10] *See* Exchange Rule 1.5(aa).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would allow market participants to immediately realize the benefits of what may be more accurate re-opening prices. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–BatsBYX–2016–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsBYX–2016–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsBYX–2016–13, and should be submitted on or before July 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14206 Filed 6–15–16; 8:45 am]

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[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78034; File No. SR–BatsBZX–2016–25]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.24, Opening Process for Non-BZX-Listed Securities

June 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2016, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rule 11.24, Opening Process for Non-BZX-Listed Securities, to await a two-sided quotation from the listing exchange prior to re-opening a security for trading following a halt, suspension, or pause in trading. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

Rule 19b–4(f)(6)(iii) under the Act.[5] The Exchange requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii) under the Act.[6]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.24, Opening Process for Non-BZX-Listed Securities, to await a two-sided quotation from the listing exchange prior to re-opening a security for trading following a halt, suspension, or pause in trading.[7]

Exchange Rule 11.24 describes the Exchange's current Opening and Re-Opening Process for non-BZX-Listed securities. Subparagraph (e) to Rule 11.24 states that while a non-BZX-listed security is subject to a halt, suspension, or pause in trading, the Exchange will accept orders for queuing prior to the resumption of trading in the security for participation in the Re-Opening Process. Subparagraph (a) to Rule 11.24 states that, prior to the beginning of the Regular Trading Hours, Users[8] who wish to participate in the Opening Process may enter orders to buy or sell.[9] Subparagraph (a)(2) to Rule 11.24 provides that, with certain exceptions,[10] all orders with a time-in-force instruction of Regular Hours Only may participate in the Opening Process. Subparagraph (e)(1) to Rule 11.24 states that the Re-Opening Process will occur in the same manner described in Rule 11.24(a)(2) and (b) described above,[11] also with certain exceptions.[12]

Subparagraph (e)(1) to Exchange Rule 11.24 also sets forth the process by which the System sets the price of the Re-Opening Process. Currently, the System[13] sets the price of the Re-Opening Process at the midpoint of the: (i) First NBBO subsequent to the first reported trade on the listing exchange following the resumption of trading after a halt, suspension, or pause; or (ii) NBBO when the first two-sided quotation is published by the listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

The Exchange proposes to amend subparagraph (e)(1) to Rule 11.24 to now await a two-sided quotation from the listing exchange prior to opening a security for trading. As amended, subparagraph (e)(1) to Rule 11.24 would state that the System would set the price of the Re-Opening Process at the midpoint of the first NBBO subsequent to the first reported trade *and first two-sided quotation* on the listing exchange following the resumption of trading after a halt, suspension, or pause. The Exchange will utilize the current NBBO to calculate the security's re-opening price once a trade and two-sided quotation are received from the listing exchange, regardless of the order in which the trade or quotation are received. The Exchange believes the proposed rule change will enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so would result in a re-opening price that more closely reflects the market prices and conditions for that security. Under subparagraph (e)(1) to Rule 11.24, the Exchange will continue to alternatively set the price of the Re-Opening Process at the midpoint of the NBBO when the first two-sided quotation is published by the listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(5) of the Act[15] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will promote just and equitable principles of trade, removes impediments to, and perfect the mechanism of, a free and open market and a national market system because it enables the System to execute the Re-Opening Process at a price that is objectively established by the market for the security. The proposal would enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so would result in a re-opening price that more closely reflect the market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change promotes just and equitable principles of trade because it ensures a midpoint price that the Exchange believes would accurately reflect the market for the security.

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[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] *Id.*

[7] The re-opening process for BZX-Listed Securities is set forth under Exchange Rule 11.23(d).

[8] *See* Exchange Rule 1.5(cc).

[9] Orders cancelled prior to the Opening Process will not participate in the Opening Process.

[10] The following order types and instruction may not participate in the opening process: BZX Post Only Orders, Partial Post Only at Limit Orders, ISOs not modified by Rule 11.24(a)(1) above, and Minimum Quantity Orders. *See* Exchange Rule 11.24(a)(2). Limit orders with a Reserve Quantity may participate to the full extent of their displayed size and Reserve Quantity. *Id.* Discretionary Orders may participate only up to their ranked price for buy orders or down to their ranked price for sell orders. *Id.* The discretionary range of such orders will not be eligible for participation in the Opening Process. *Id.* All Pegged Orders and Mid-Point Peg Orders, as defined in Rule 11.9(c)(8) and (9), will be eligible for execution in the Opening Process based on their pegged prices. *Id.*

[11] Subparagraph (b) to Rule 11.24 states that the Exchange will open by performing the Opening Process in which the System will attempt to match buy and sell orders that are executable at the midpoint of the National Best Bid and Offer ("NBBO"). Furthermore, subparagraph (b) of Rule 11.24 also states that all orders executable at the midpoint of the NBBO will continue to be processed in time sequence, beginning with the order with the oldest time stamp. Matches occur until there are no remaining contra-side orders or there is an imbalance of orders. An imbalance of orders may result in orders that cannot be executed in whole or in part. Any unexecuted orders may then be placed by the System on the BZX Book, cancelled, executed, or routed to away Trading Centers in accordance with the Users' instructions pursuant to Exchange Rule 11.13(a)(2).

[12] Orders without a time-in-force instruction of Regular Hours Only are eligible to participate in the Re-Opening Process, but IOC, FOK, BZX Post Only Orders, and Minimum Quantity Orders will be cancelled or rejected, as applicable, and any ISO that is not IOC or FOK will be converted into a non-ISO and be queued for participation in the Re-Opening Process. *See* Exchange Rule 11.24(e)(1).

[13] *See* Exchange Rule 1.5(aa).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will enable the Exchange to incorporate the listing market's quotation into its calculation of the midpoint of the NBBO, resulting in a re-opening price that would more closely reflect the opening market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change will promote competition by enhancing the quality of the Exchange's opening process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[18] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would allow market participants to immediately realize the benefits of what may be more accurate re-opening prices. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BatsBZX–2016–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsBZX–2016–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsBZX–2016–25, and should be submitted on or before July 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14205 Filed 6–15–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Enterprise Energy, Inc., Order of Suspension of Trading

June 14, 2016.

It appears to the Securities and Exchange Commission ("Commission") that the public interest and the protection of investors require a suspension of trading in the securities of Enterprise Energy, Inc. (CIK No. 0001587285) because of recent, unusual and unexplained market activity and potentially manipulative transactions in the company's stock. Enterprise Energy, Inc. is a Nevada corporation with its principal place of business listed as Las Vegas, Nevada, with stock quoted on OTC Link (previously "Pink Sheets") operated by OTC Markets Group Inc. under the ticker symbol EYGY.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Enterprise Energy, Inc. is suspended for the period from 9:30 a.m. EDT on June 14, 2016, through 11:59 p.m. EDT on June 27, 2016.

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[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–14379 Filed 6–14–16; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78037; File No. SR–NASDAQ–2016–052]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement of Penny Pilot Issues That Have Been Delisted

June 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on June 8, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing with the Commission a proposal to amend Chapter VI, Section 5 (Minimum Increments)[3] of the rules of the NASDAQ Options Market ("NOM") to extend through December 31, 2016 or the date of permanent approval, if earlier, the Penny Pilot Program in options classes in certain issues ("Penny Pilot" or "Pilot"), and to change the date when delisted classes may be replaced in the Penny Pilot.[4]

The text of the amended Exchange rule is set forth immediately below.

Proposed new language is *underlined* and proposed deleted language is [bracketed].

NASDAQ Stock Market Rules

Options Rules

* * * * *

Chapter VI Trading Systems

* * * * *

Sec. 5 Minimum Increments

(a) The Board may establish minimum quoting increments for options contracts traded on NOM. Such minimum increments established by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Section within the meaning of Section 19 of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing. Until such time as the Board makes a change in the increments, the following principles shall apply:

(1)–(2) No Change.

(3) For a pilot period scheduled to expire on [June 30]*December 31,* 2016 or the date of permanent approval, if earlier, if the options series is trading pursuant to the Penny Pilot program one (1) cent if the options series is trading at less than $3.00, five (5) cents if the options series is trading at $3.00 or higher, unless for QQQQs, SPY and IWM where the minimum quoting increment will be one cent for all series regardless of price. A list of such options shall be communicated to membership via an Options Trader Alert ("OTA") posted on the Exchange's Web site.

The Exchange may replace any pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the pilot, based on trading activity in the previous six months. The replacement issues may be added to the pilot on the second trading day following July 1, [2015]*2016*[and January 1, 2016].

(4) No Change.

(b) No Change.

* * * * *

The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Chapter VI, Section 5 to extend the Penny Pilot through December 31, 2016 or the date of permanent approval, if earlier,[5] and to change the date when delisted classes may be replaced in the Penny Pilot. The Exchange believes that extending the Penny Pilot will allow for further analysis of the Penny Pilot and a determination of how the program should be structured in the future.

Under the Penny Pilot, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock ("QQQQ"), the SPDR S&P 500 Exchange Traded Fund ("SPY") and the iShares Russell 2000 Index Fund ("IWM"), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot is currently scheduled to expire on June 30, 2016.

The Exchange proposes to extend the time period of the Penny Pilot through December 31, 2016 or the date of permanent approval, if earlier, and to provide a revised date for adding replacement issues to the Penny Pilot. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2016. The replacement issues will be selected based on trading activity in the previous six months.[6]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References herein to Chapter and Series refer to rules of the NASDAQ Options Market ("NOM"), unless otherwise noted.

[4] The Penny Pilot was established in March 2008 and was last extended in 2014. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); and 75283 (June 24, 2015), 80 FR 37347 (June 30, 2015) (SR–NASDAQ–2015–063) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016).

[5] The options exchanges in the U.S. that have pilot programs similar to the Penny Pilot (together "pilot programs") are currently working on a proposal for permanent approval of the respective pilot programs.

[6] The replacement issues will be announced to the Exchange's membership via an Options Trader Alert (OTA) posted on the Exchange's Web site. The Exchange proposes in its Penny Pilot rule that replacement issues will be selected based on trading activity in the previous six months. The replacement issues would be identified based on The Options Clearing Corporation's trading volume data. For example, for the July replacement, trading volume from December 1, 2015 through May 30, 2016 would be analyzed. The month immediately preceding the replacement issues' addition to the Pilot Program (*i.e.,* June) would not be used for purposes of the six-month analysis.

This filing does not propose any substantive changes to the Penny Pilot Program; all classes currently participating in the Penny Pilot will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the potential increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the proposed rule change, which extends the Penny Pilot for an additional six months through December 31, 2016 or the date of permanent approval, if earlier, and changes the date for replacing Penny Pilot issues that were delisted to the second trading day following July 1, 2016, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. This is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, this proposal is pro-competitive because it allows Penny Pilot issues to continue trading on the Exchange.

Moreover, the Exchange believes that the proposed rule change will allow for further analysis of the Pilot and a determination of how the Pilot should be structured in the future; and will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

The Pilot is an industry-wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot will allow for continued competition between market participants on the Exchange trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing.[12] However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–052 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASDAQ–2016–052. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml*.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR–NASDAQ–2016–052 and should be submitted on or before July 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert Errett,

Deputy Secretary.

[FR Doc. 2016–14208 Filed 6–15–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78038; File No. SR–BatsEDGA–2016–13]

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.7, Opening Process

June 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2016, Bats EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rule 11.7, Opening Process, to await a two-sided quotation from the listing exchange prior to re-opening a security for trading following a halt, suspension, or pause in trading.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.7, Opening Process, to await a two-sided quotation from the listing exchange prior to re-opening a security for trading following a halt, suspension, or pause in trading.

Exchange Rule 11.7 describes the Exchange's current Opening and Re-Opening Process. Subparagraph (e) to Rule 11.7 states that while a security is subject to a halt, suspension, or pause in trading, the Exchange will accept orders for queuing prior to the resumption of trading in the security for participation in the Re-Opening Process. Subparagraph (a) to Rule 11.7 states that, prior to the beginning of the Regular Trading Hours, Users[5] who wish to participate in the Opening Process may enter orders to buy or sell.[6] Subparagraph (a)(2) to Rule 11.7 provides that, with certain exceptions,[7] all orders with a time-in-force instruction of Regular Hours Only may participate in the Opening Process. Subparagraph (e)(1) to Rule 11.7 states that the Re-Opening Process will occur in the same manner described in Rule 11.7(a)(2) and (b) described above,[8] also with certain exceptions.[9]

Subparagraph (e)(1) to Exchange Rule 11.7 also sets forth the process by which the System sets the price of the Re-Opening Process. Currently, the System[10] sets the price of the Re-Opening Process at the midpoint of the: (i) First NBBO subsequent to the first reported trade on the listing exchange following the resumption of trading after a halt, suspension, or pause; or (ii) NBBO when the first two-sided quotation is published by the listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

The Exchange proposes to amend subparagraph (e)(1) to Rule 11.7 to now await a two-sided quotation from the listing exchange prior to opening a security for trading. As amended, subparagraph (e)(1) to Rule 11.7 would state that the System would set the price of the Re-Opening Process at the midpoint of the first NBBO subsequent to the first reported trade *and first two-sided quotation* on the listing exchange following the resumption of trading after a halt, suspension, or pause. The Exchange will utilize the current NBBO to calculate the security's re-opening price once a trade and two-sided quotation are received from the listing exchange, regardless of the order in which the trade or quotation are received. The Exchange believes the proposed rule change will enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so would result in a re-opening price that more closely reflects the market prices and conditions for that security. Under subparagraph (e)(1) to Rule 11.7, the Exchange will continue to alternatively set the price of the Re-Opening Process at the midpoint of the NBBO when the first two-sided quotation is published by the listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Exchange Rule 1.5(ee).

[6] Orders cancelled prior to the Opening Process will not participate in the Opening Process.

[7] The following order types and instruction may not participate in the opening process: Limit Orders with a Post Only instruction, the Discretionary Range of Limit Orders, ISOs not modified by Rule 11.7(a)(1), and orders with a Minimum Execution Quantity instruction. *See* Exchange Rule 11.7(a)(2). Limit Orders with a Reserve Quantity may participate to the full extent of their displayed size and Reserve Quantity. *Id.* Limit Orders with a Discretionary Range may participate up to their ranked limit price for buy orders or down to their ranked limit price for sell orders. *Id.* All Limit Orders with a Pegged instruction, as defined in Exchange Rule 11.6(i), will be eligible for execution in the Opening Process based on their pegged prices. *Id.*

[8] Subparagraph (b) to Rule 11.7 states that the Exchange will open by performing the Opening Process in which the System will attempt to match buy and sell orders that are executable at the midpoint of the National Best Bid and Offer ("NBBO"). Furthermore, subparagraph (b) of Rule 11.7 also states that all orders executable at the midpoint of the NBBO will continue to be processed in time sequence, beginning with the order with the oldest time stamp. Matches occur until there are no remaining contra-side orders or there is an imbalance of orders. An imbalance of orders may result in orders that cannot be executed in whole or in part. Any unexecuted orders may then be placed by the System on the EDGA Book, cancelled, executed, or routed to away Trading Centers in accordance with the Users' instructions pursuant to Exchange Rule 11.11.

[9] Orders without a time-in-force ("TIF") instruction of Regular Hours Only are eligible to participate in the Re-Opening Process, but orders that include a TIF instruction of IOC or FOK, a Post Only instruction or Minimum Execution Quantity instruction will be cancelled or rejected, as applicable, and any ISO that does not include a TIF instruction of IOC or FOK will be converted into a non-ISO and be queued for participation in the Re-Opening Process. *See* Exchange Rule 11.7(e)(1).

[10] *See* Exchange Rule 1.5(cc).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will promote just and equitable principles of trade, removes impediments to, and perfect the mechanism of, a free and open market and a national market system because it enables the System to execute the Re-Opening Process at a price that is objectively established by the market for the security. The proposal would enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so would result in a re-opening price that more closely reflect the market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change promotes just and equitable principles of trade because it ensures a midpoint price that the Exchange believes would accurately reflect the market for the security.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will enable the Exchange to incorporate the listing market's quotation into its calculation of the midpoint of the NBBO, resulting in a re-opening price that would more closely reflect the opening market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change will promote competition by enhancing the quality of the Exchange's opening process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would allow market participants to immediately realize the benefits of what may be more accurate re-opening prices. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR-BatsEDGA–2016–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR-BatsEDGA–2016–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/*

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[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BatsEDGA-2016-13, and should be submitted on or before July 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-14209 Filed 6-15-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78031; File No. SR-DTC-2016-004]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Establish a Link With Euroclear

June 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 3, 2016, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(2) of the Act thereunder.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Rules, By-Laws and Organization Certificate of The Depository Trust Company (the "Rules")[4] in order to add new Rule 34 (EB Link) to establish a link ("EB Link") between DTC and Euroclear Bank SA/NV ("EB") for DTC Participants that are also EB participants ("CP Participants") to use Securities held at DTC for EB Collateral Transactions (as defined below). The proposed Rule 34 specifies the Accounts, Free Deliveries, and the terms and conditions that together comprise collateral positioning ("Collateral Positioning" or "CP") for CP Participants. The proposed rule change would: (i) Allow CP Participants to designate a sub-account for Collateral Positioning (a "CP Sub-Account") of Securities selected by the CP Participant (the "CP Securities") to Deliver to EB; and (ii) establish the Securities Account of EB (the "EB Account") on the books of DTC to receive and hold such CP Securities. DTC understands that EB would then credit such CP Securities to an account it maintains on its books for such CP Participant for use in transfers on the books of EB ("EB Collateral Transactions") in connection with EB's collateral management services ("EB CMS"), as described below.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposal would add new Rule 34 (EB Link) to establish the EB Link between DTC and EB for CP Participants to use Securities held at DTC for EB Collateral Transactions. The proposed Rule 34 specifies the Accounts, Free Deliveries, and the terms and conditions that together comprise Collateral Positioning for CP Participants. The proposed rule change would: (i) Allow CP Participants to designate a CP Sub-Account of CP Securities to Deliver to EB; and (ii) establish the EB Account on the books of DTC to receive and hold such CP Securities. DTC understands that EB would then credit such CP Securities to an account it maintains on its books for such CP Participant for use in EB Collateral Transactions in connection with EB CMS, as described below.

(i) Background

(a) New Regulations Require Better Access to and Management of Securities Collateral

New and enhanced regulatory requirements are leading derivative and financing counterparties to seek increased efficiency in the availability and deployment of collateral and streamlined margin processing. More specifically, the phase-in period of the Basel III liquidity rules,[6] as well as recent regulatory changes by the Commodity Futures Trading Commission,[7] the U.S. prudential regulators,[8] European Market

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[18] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(2).

[4] Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.* Pursuant to a telephone call with DTC's internal counsel on June 9, 2016, staff in the Commission's Office of Clearance and Settlement added this footnote. DTC inadvertently omitted the footnote.

[5] On May 9, 2016, EB filed an application with the U.S. Securities and Exchange Commission ("Commission") on Form CA-1, seeking to amend its existing exemption from clearing agency registration by expanding its existing exemption to authorize EB to offer EB CMS to its U.S. participants for U.S. equities (the "EB CA-1 Amendment"). DTC understands that the EB CA-1 Amendment is necessary for EB to offer EB CMS, and consequently, the DTCC Euroclear Global Collateral Ltd. ("DEGCL") Inventory Management Service ("DEGCL IMS"), to U.S. participants for U.S. equities. Commission approval of this proposed rule change to add new Rule 34 (EB Link) would have no effect on the authority of EB pursuant to the EB CA-1 Amendment. In addition, this proposed rule change provides that it would not be implemented until the EB CA-1 Amendment is approved by the Commission.

[6] Basel Committee on Banking Supervision, Basel III: A global framework for more resilient banks and the banking system, December 2010 and revised June 2011; Basel Committee on Banking Supervision, Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools, January 2013; Basel Committee on Banking Supervision, Basel III: the net stable funding ratio, October 2014, *available at www.bis.org/bcbs/basel3.htm.*

[7] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 635 (January 6, 2016); 17 CFR parts 23 and 140.

[8] Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (November 30, 2015); 12 CFR parts 45, 237, 349, 624 and 1221. The U.S. prudential regulators include: Office of the Comptroller of the Currency—Treasury, Board of

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Infrastructure Regulation,[9] and the Basel Committee on Banking Supervision ("BCBS") and the International Organization of Securities Commissions ("IOSCO"),[10] have resulted in increased capital requirements, mandatory central clearing of more derivatives transactions, and new margining rules for bilateral trades, driving a significant increased demand for high quality collateral.

These regulatory changes further include requirements for initial margin for counterparties as well as a reduction or removal of thresholds for variation margin.[11] It is expected that the inclusion of initial margin will significantly increase the amount of collateral required and will create additional margin calls by affected counterparties. In addition, it is expected that the removal or reduction of thresholds for variation margin will mean any changes in underlying valuations may trigger increased margin calls requiring market participants to hold additional collateral available for posting. Also, these regulatory changes include new restrictions on eligible collateral, requiring the use of highly liquid assets, prescribed haircuts, segregation requirements, as well as a prohibition on rehypothecation for initial margin. Given these forthcoming requirements, counterparties would need to access and deploy collateral more effectively.

(b) Proposed Rule Change Would Support DEGCL IMS

DEGCL is a United Kingdom ("UK") joint venture of DTCC and Euroclear S.A./N.V. ("Euroclear"), authorized by the Financial Conduct Authority ("FCA") in the UK as a "service company"[12] in accordance with applicable law of the UK. DEGCL was formed for the purpose of offering global information, record keeping, and processing services for derivatives collateral transactions and other types of financing transactions. DEGCL seeks to provide services to its users, including buy-side and sell-side financial institutions, in meeting their risk management and regulatory requirements for the holding and exchange of collateral, as required by these new regulatory requirements.

In particular, DEGCL IMS would address the increased demand for cross-border availability of securities collateral, some of which may be held at DTC. The purpose of DEGCL IMS is to offer to its users a more global view of their collateral assets and support cross-border mobility and to integrate information and record keeping for collateral use of Securities held at DTC and EB.

DEGCL IMS would be operated by EB and other entities in the Euroclear group, as the service provider to DEGCL, in accordance with appropriate agreements among these parties and in compliance with applicable regulatory requirements. There is no direct relationship between DTC and DEGCL IMS. DEGCL IMS would be offered to any financial institution that is both a DTC Participant and a participant of EB that has elected to use EB CMS ("EB Collateral Participant").

EB Link and Collateral Positioning Would Offer Global Collateral Mobility for Securities Held at DTC by CP Participants

The proposed rule change would establish the EB Link between DTC and EB through which a CP Participant could Deliver Securities from its Account to its CP Sub-Account and, from there, to the EB Account at DTC. The object is for EB to then credit the Securities to an account of the CP Participant on the books of EB for use in EB CMS.

For purposes of the EB Link, EB has become a Participant of DTC,[13] in order to establish the EB Account to which CP Securities would be credited. Accordingly, EB would act in two capacities: (i) On its own behalf as a Participant of DTC, to maintain the EB Account in which CP Securities may be held, so that EB may effect book entry transfers of those Securities on its own books and records; and (ii) on behalf of each CP Participant as the representative (the "CP Representative") of such CP Participant, to provide instructions to DTC on the CP Participant's behalf for the Delivery of CP Securities from the CP Sub-Account, and to receive certain information (x) once each Business Day, identifying the CP Securities that are credited to the CP Sub-Account at the time of the report (the "CP Securities Report"), and (y) that specified CP Securities have been Delivered into or out of the CP Sub-Account, and/or that an instruction has been given to DTC to Deliver specified CP Securities out of the CP Sub-Account, as applicable (the "Delivery Information").

The CP Participant would authorize EB as its CP Representative, to provide instructions on its behalf, and to receive the CP Securities Report and Delivery Information. Both the CP Securities Report and Delivery Information would include, with respect to the CP Securities specified therein, the following information: (i) The CUSIP, ISIN, or other identification number of the CP Securities; and (ii) the number of shares or other units or principal amount of the CP Securities.

The CP Participant would instruct DTC to Deliver the CP Securities from the CP Participant's Account to its CP Sub-Account. After the CP Securities have been credited to the CP Sub-Account, EB, as CP Representative, may instruct DTC to make a Free Delivery of the appropriate CP Securities from the CP Sub-Account to the EB Account.[14]

Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration, and the Federal Housing Finance Agency.

[9] European Supervisory Authorities' (ESAs) Final Draft Regulatory Technical Standards on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP under Article 11(15) of Regulation (EU) No 648/2012 (EMIR), *available at https://www.eba.europa.eu/documents/10180/1398349/RTS+on+Risk+Mitigation+Techniques+for+OTC+contracts+%28JC–2016–+18%29.pdf/fb0b3387-3366-4c56-9e25-74b2a4997e1d.*

[10] BCBS–IOSCO, Margin requirements for non-centrally cleared derivatives (March 2015), *available at http://www.bis.org/bcbs/publ/d317.htm.*

[11] Initial margin means money, securities, or property posted by a party to a swap as performance bond to cover potential future exposures arising from changes in the market value of the position. Variation margin means a payment made by or collateral posted by a party to a swap to cover the current exposure arising from changes in the market value of the position since the trade was executed or the previous time the position was marked to market. *See* 17 CFR 23.700.

[12] DEGCL was authorized as a "service company" by the FCA on March 29, 2016. A "service company," as defined in the FCA Handbook, Glossary, is: "[A] firm whose only permitted activities are making arrangements with a view to transactions in investments, and agreeing to carry on that regulated activity, and whose Part 4A permission: (a) Incorporates a limitation substantially to the effect that the firm carry on regulated activities only with market counterparties or intermediate customers; and (b) includes requirements substantially to the effect that the firm must not: (i) Guarantee, or otherwise accept responsibility for, the performance, by a participant in arrangements made by the firm in carrying on regulated activities, of obligations undertaken by that participant in connection with those arrangements; or (ii) approve any financial promotion on behalf of any other person or any specified class of persons; or (iii) in carrying on its regulated activities, provide services otherwise than in accordance with documents (of a kind specified in the requirement) provided by the firm to the FCA." FCA Handbook, Glossary, *available at https://www.handbook.fca.org.uk/handbook/glossary.*

[13] EB was accepted as a Participant on February 18, 2016. Upon approval of EB as a Participant, EB, like any other Participant, signed a Participant's Agreement pursuant to which it agreed, *inter alia,* that the DTC Rules shall be a part of the terms and conditions of every contract or transaction that EB may make or have with DTC, including the Regulation Systems Compliance and Integrity testing requirements set forth in DTC Rule 2 (Participants and Pledgees).

[14] EB would determine the eligibility of CP Securities for DEGCL IMS on the basis of the eligibility profile provided to DEGCL by its user

All Deliveries from the CP Participant's Account to its CP Sub-Account and from the CP Sub-Account to the EB Account would be Free Deliveries, subject to DTC risk management controls.[15]

After CP Securities have been credited to the EB Account, it would then be EB's responsibility to credit them to an account at EB maintained for the CP Participant, as an EB Collateral Participant. The originating CP Participant, as an EB Collateral Participant, may then choose to hold the CP Securities in an account at EB, pending use in any EB Collateral Transaction, or transfer the CP Securities on the books of EB to one or more other EB Collateral Participants in connection with EB Collateral Transactions.

EB may instruct DTC to Deliver CP Securities from the EB Account to the CP Sub-Account from which such CP Securities originated. This may occur if: (i) the CP Participant as a DEGCL IMS user changes its DEGCL IMS inventory profile in a way that renders the CP Securities credited to the EB Account no longer eligible for DEGCL IMS; (ii) the CP Participant submits a Delivery instruction for such CP Securities;[16] or (iii) the CP Securities are subject to a corporate action or tax event.[17]

EB may also instruct DTC to Deliver CP Securities from the EB Account to the Securities Account of a Participant that EB has designated as its global custodian ("EB Global Custodian").[18] The CP Securities held in the EB Account are held there exclusively for EB Collateral Transactions, so this proposed rule change would require EB to Deliver CP Securities from the EB Account to the Securities Account of the EB Global Custodian in connection with any liquidation of those CP Securities.

(iii) Proposed Rule Change

The proposed rule change would add Rule 34 to the DTC Rules, to provide for:

(i) The establishment and maintenance of a CP Sub-Account for each CP Participant;

(ii) The establishment and maintenance of the EB Account for the purpose of Collateral Positioning Deliveries;

(iii) Free Deliveries of CP Securities by a CP Participant from an Account of the CP Participant to its CP Sub-Account, and back to (A) the originating Account of the CP Participant; (B) another Non-CP Account of the CP Participant; or (C) the Account of another Participant;

(iv) Free Deliveries of CP Securities as instructed by EB, as CP Representative of the CP Participant, from the CP Sub-Account of the CP Participant to the EB Account;

(v) Free Deliveries of CP Securities as instructed by EB from the EB Account to (A) the CP Sub-Account from which such CP Securities originated, or (B) the Account of the EB Global Custodian;

(vi) Information to be provided by DTC to EB, as CP Representative of the CP Participant, specifically, the CP Securities Report and the Delivery Information;

(vii) The requirement that Deliveries provided in the proposed rule change must be Free Deliveries, and shall be subject to the terms and provisions of the DTC Rules and the Procedures applicable to the Deliveries of Securities, including DTC risk management controls; and

(viii) DTC's disclaimer of liability to: (A) Any CP Participant as a result of acting on instructions from EB or providing EB the Delivery Information or the CP Securities Report pursuant to Rule 34; (B) EB as a result of acting on instructions from a CP Participant pursuant to Rule 34; (C) EB or any CP Participant as a result of any loss relating to Rule 34, unless caused directly by DTC's gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private rights of action; and (D) to any third party for any reason, including without limitation, DEGCL.

(iv) Implementation Timeframe

This proposed rule change will be implemented on the later of: (i) The date of Commission approval of this filing; and (ii) the date of a Commission order approving the EB CA–1 Amendment, authorizing EB to offer EB CMS to U.S. EB Collateral Participants for U.S. equities. Participants would be advised of the implementation date through the issuance of a DTC Important Notice.

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to DTC, in particular Section 17A(b)(3)(F) of the Act[19] and Rule 17Ad–22(d)(7) promulgated thereunder.[20]

Section 17A(b)(3)(F) of the Act[21] requires, *inter alia,* that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. DTC understands that EB is currently an indirect participant holding DTC Eligible Securities through one or more other financial institutions that are direct Participants. By establishing a direct link between DTC and EB so that DTC Participants may more directly deploy their securities collateral for EB Collateral Transactions, the transactions would be processed with EB more efficiently, thus promoting prompt and accurate transactions and the safeguarding of securities and funds in the custody or control of DTC, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

Rule 17Ad–22(d)(7)[22] promulgated under the Act requires that a clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to evaluate the potential sources of risks that can arise when the clearing agency establishes links either cross-border or

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counterparties, and subject to EB's securities eligibility rules.

[15] DTC risk management controls, including Collateral Monitor and Net Debit Cap (as defined in Rule 1, Section 1 of the DTC Rules, *supra* note 1 [sic]), are designed so that DTC may complete system-wide settlement notwithstanding the failure to settle of its largest Participant or affiliated family of Participants. The Collateral Monitor tests whether a Receiver has adequate collateral to secure the amount of its net debit balance. The Net Debit Cap limits the Net Debit Balance of a Participant so that it cannot exceed DTC liquidity resources for settlement. Pursuant to these controls under applicable DTC Rules and Procedures, any Delivery instruction order to a CP Sub-Account that would cause the CP Participant to exceed its Net Debit Cap (which a Free Delivery should not) or to have insufficient DTC collateral to secure its obligations to DTC (which is possible), would not be processed by DTC. CP Deliveries would be processed in the same order and with the same priority as otherwise provided in the DTC Rules and Procedures (i.e., such Deliveries would not take precedence over any other type of Delivery in the DTC system).

[16] If at any time a CP Participant has a pending instruction for Delivery of Securities that had been Delivered from its CP Sub-Account to the EB Account, DTC understands that EB would instruct DTC to Deliver those Securities from the EB Account back to the CP Sub-Account from which they originated.

[17] If EB does not Deliver the CP Securities back to the CP Sub-Account of the CP Participant prior to the applicable record date for a corporate action, the corporate action would be processed by DTC in the ordinary course to EB as the Participant holding the Securities on the Record Date.

[18] EB has not been a direct DTC Participant or had a Securities Account at DTC prior to this proposed EB Link; EB has held Eligible Securities only as an indirect participant through a bank that it characterizes as its "global custodian" and that is a DTC Participant. The EB Link is proposed to be established for, and expressly limited to, Collateral Positioning in connection with EB Collateral Transactions. EB may continue to use the EB Global Custodian for other EB transactions and to hold non-CP Securities indirectly at DTC.

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] 17 CFR 240.17Ad–22(d)(7).

[21] 15 U.S.C. 78q–1(b)(3)(F).

[22] 17 CFR 240.17Ad–22(d)(7).

domestically to clear or settle trades, and ensure that the risks are managed prudently on an ongoing basis. In developing the proposed EB Link, DTC evaluated the risks that could arise by establishing a link with EB, a foreign central securities depository. DTC determined that because all Deliveries between CP Sub-Accounts and the EB Account would be subject to DTC risk management controls and would be limited to Free Deliveries, there should be minimum risk, in particular, no funds settlement risk, for this link. As such, DTC believes the proposed EB Link is consistent with DTC's obligations under Rule 17Ad-22(d)(7), cited above.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact, or impose any burden on competition because it would establish an EB Link to which any CP Participant would have access.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self- regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–DTC–2016–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2016–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2016–004 and should be submitted on or before July 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14203 Filed 6–15–16; 8:45 am]

BILLING CODE 8011–01–P

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[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78040; File No. 265–29]

Equity Market Structure Advisory Committee Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of telephonic meeting.

SUMMARY: The Securities and Exchange Commission Equity Market Structure Advisory Committee is providing notice that it will hold an open, public telephone meeting on Friday, July 8, 2016, beginning at 2:00 p.m. (EDT). Members of the public may attend the meeting by listening to the webcast accessible on the Commission's Web site at *www.sec.gov*. Persons needing special accommodations to take part because of a disability should notify the contact person listed below. The agenda for the meeting includes presentations by the Regulation NMS and Trading Venues Regulations subcommittee chairs and consideration of a recommendation for an access fee pilot and recommendations related to trading venues regulation. The public is invited to submit written statements to the Committee.

DATES: The public telephonic meeting will be held on Friday, July 8, 2016. Written statements should be received on or before July 5, 2016.

ADDRESSES: Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rules-comments@sec.gov*. Please include File No. 265–29 on the subject line; or

Paper Statements

- Send paper statements to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–29. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method.

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change;

we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Arisa Tinaves Kettig, Senior Special Counsel, Division of Trading and Markets, at (202) 551–5676, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, and the regulations thereunder, Stephen Luparello, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: June 10, 2016.

Brent J. Fields,

Committee Management Officer.

[FR Doc. 2016–14199 Filed 6–15–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78032; File No. SR–BatsBZX–2016–23]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Penny Pilot Program

June 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 2016, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal for the BZX Options Market ("BZX Options" f/k/a "BATS Options") to extend through December 31, 2016, the Penny Pilot Program ("Penny Pilot") in options classes in certain issues ("Pilot Program") previously approved by the Commission.[5]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the Penny Pilot, which was previously approved by the Commission, through December 31, 2016, and to provide revised dates for adding replacement issues to the Pilot Program. The Exchange proposes that any Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2016. The replacement issues will be selected based on trading activity for the most recent six month period excluding the month immediately preceding the replacement (*i.e.*, beginning December 1, 2015, and ending May 31, 2016).

The Exchange represents that the Exchange has the necessary system capacity to continue to support operation of the Penny Pilot. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[7] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options. Accordingly, the Exchange believes that the proposal is consistent with the Act because it will allow the Exchange to extend the Pilot Program prior to its expiration on June 30, 2016. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard, the Exchange notes that the rule change is being proposed in order to continue the Pilot Program, which is a competitive response to analogous programs offered by other options exchanges. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] The rules of BZX Options, including rules applicable to BZX Options' participation in the Penny Pilot, were approved on January 26, 2010. *See* Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031). BZX Options commenced operations on February 26, 2010. The Penny Pilot was most recently extended for BZX Options through June 30, 2016. *See* Securities Exchange Act Release No. 75388 (June 30, 2015), 80 FR 38793 (July 7, 2015) (SR–BATS–2015–50).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[11] However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[13] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBZX–2016–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBZX–2016–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml.*) Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2016–23 and should be submitted on or before July 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14204 Filed 6–15–16; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44). *See also supra* note 5.

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78036; File No. SR–BX–2016–021]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of the Exchange's Penny Pilot Program and Replacement of Penny Pilot Issues That Have Been Delisted

June 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on June 8, 2016, NASDAQ BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX is filing with the Commission a proposal to amend Chapter VI, Section 5 (Minimum Increments),[3] to extend through December 31, 2016 or the date of permanent approval, if earlier, the Penny Pilot Program in options classes in certain issues ("Penny Pilot" or "Pilot"), and to change the date when delisted classes may be replaced in the Penny Pilot.[4]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References herein to Chapter and Series refer to rules of the BX Options Market ("BX Options"), unless otherwise noted.

[4] The Penny Pilot was established in June 2012 and extended in 2014. *See* Securities Exchange Act

The text of the amended Exchange rule is set forth immediately below.

Proposed new language is *underlined* and proposed deleted language is [bracketed].

NASDAQ BX Rules

Options Rules

* * * * *

Chapter VI Trading Systems

* * * * *

Sec. 5 Minimum Increments

(a) The Board may establish minimum quoting increments for options contracts traded on BX Options. Such minimum increments established by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Section within the meaning of Section 19 of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing. Until such time as the Board makes a change in the increments, the following principles shall apply:

(1)–(2) No Change.

(3) For a pilot period scheduled to expire on [June 30]*December 31,* 2016 or the date of permanent approval, if earlier, if the options series is trading pursuant to the Penny Pilot program one (1) cent if the options series is trading at less than $3.00, five (5) cents if the options series is trading at $3.00 or higher, unless for QQQQs, SPY and IWM where the minimum quoting increment will be one cent for all series regardless of price. A list of such options shall be communicated to membership via an Options Trader Alert (“OTA”) posted on the Exchange’s Web site.

The Exchange may replace any pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the pilot, based on trading activity in the previous six months. The replacement issues may be added to the pilot on the second trading day following July 1, [2015]*2016*[and January 1, 2016].

(4) No Change.

(b) No Change.

* * * * *

The text of the proposed rule change is also available on the Exchange’s Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Chapter VI, Section 5, to extend the Penny Pilot through December 31, 2016 or the date of permanent approval, if earlier,[5] and to change the date when delisted classes may be replaced in the Penny Pilot. The Exchange believes that extending the Penny Pilot will allow for further analysis of the Penny Pilot and a determination of how the program should be structured in the future.

Under the Penny Pilot, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (“QQQQ”), the SPDR S&P 500 Exchange Traded Fund (“SPY”) and the iShares Russell 2000 Index Fund (“IWM”), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot is currently scheduled to expire on June 30, 2016.

The Exchange proposes to extend the time period of the Penny Pilot through December 31, 2016 or the date of permanent approval, if earlier, and to provide a revised date for adding replacement issues to the Penny Pilot. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2016. The replacement issues will be selected based on trading activity in the previous six months.[6]

This filing does not propose any substantive changes to the Penny Pilot Program; all classes currently participating in the Penny Pilot will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the potential increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the proposed rule change, which extends the Penny Pilot for an additional six months through December 31, 2016 or the date of permanent approval, if earlier, and changes the date for replacing Penny Pilot issues that were delisted to the second trading day following July 1, 2016, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. This is consistent with the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, this proposal is pro-

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Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (order approving BX option rules and establishing Penny Pilot); and 75326 (June 29, 2015), 80 FR 38481 (July 6, 2015) (SR–BX–2015–037) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016).

[5] The options exchanges in the U.S. that have pilot programs similar to the Penny Pilot (together “pilot programs”) are currently working on a proposal for permanent approval of the respective pilot programs.

[6] The replacement issues will be announced to the Exchange’s membership via an Options Trader Alert (OTA) posted on the Exchange’s Web site. The Exchange proposes in its Penny Pilot rule that replacement issues will be selected based on trading activity in the previous six months. The replacement issues would be identified based on The Options Clearing Corporation’s trading volume data. For example, for the July replacement, trading volume from December 1, 2015 through May 30, 2016 would be analyzed. The month immediately preceding the replacement issues’ addition to the Pilot Program (*i.e.,* June) would not be used for purposes of the six-month analysis.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

competitive because it allows Penny Pilot issues to continue trading on the Exchange.

Moreover, the Exchange believes that the proposed rule change will allow for further analysis of the Pilot and a determination of how the Pilot should be structured in the future; and will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

The Pilot is an industry-wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot will allow for continued competition between market participants on the Exchange trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing.[12] However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2016–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–BX–2016–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml.*

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of BX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2016–021 and should be submitted on or before July 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14207 Filed 6–15–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78039; File No. SR–BatsEDGX–2016–24]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.7, Opening Process

June 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.7, Opening Process, to await a two-sided quotation from the listing exchange prior to re-opening a security for trading following a halt, suspension, or pause in trading.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.7, Opening Process, to await a two-sided quotation from the listing exchange prior to re-opening a security for trading following a halt, suspension, or pause in trading.

Exchange Rule 11.7 describes the Exchange's current Opening and Re-Opening Process. Subparagraph (e) to Rule 11.7 states that while a security is subject to a halt, suspension, or pause in trading, the Exchange will accept orders for queuing prior to the resumption of trading in the security for participation in the Re-Opening Process. Subparagraph (a) to Rule 11.7 states that, prior to the beginning of the Regular Trading Hours, Users[5] who wish to participate in the Opening Process may enter orders to buy or sell.[6] Subparagraph (a)(2) to Rule 11.7 provides that, with certain exceptions,[7] all orders with a time-in-force instruction of Regular Hours Only may participate in the Opening Process. Subparagraph (e)(1) to Rule 11.7 states that the Re-Opening Process will occur in the same manner described in Rule 11.7(a)(2) and (b) described above,[8] also with certain exceptions.[9]

Subparagraph (e)(1) to Exchange Rule 11.7 also sets forth the process by which the System sets the price of the Re-Opening Process. Currently, the System[10] sets the price of the Re-Opening Process at the midpoint of the: (i) First NBBO subsequent to the first reported trade on the listing exchange following the resumption of trading after a halt, suspension, or pause; or (ii) NBBO when the first two-sided quotation is published by the listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

The Exchange proposes to amend subparagraph (e)(1) to Rule 11.7 to now await a two-sided quotation from the listing exchange prior to opening a security for trading. As amended, subparagraph (e)(1) to Rule 11.7 would state that the System would set the price of the Re-Opening Process at the midpoint of the first NBBO subsequent to the first reported trade *and first two-sided quotation* on the listing exchange following the resumption of trading after a halt, suspension, or pause. The Exchange will utilize the current NBBO to calculate the security's re-opening price once a trade and two-sided quotation are received from the listing exchange, regardless of the order in which the trade or quotation are received. The Exchange believes the proposed rule change will enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so would result in a re-opening price that more closely reflects the market prices and conditions for that security. Under subparagraph (e)(1) to Rule 11.7, the Exchange will continue to alternatively set the price of the Re-Opening Process at the midpoint of the NBBO when the first two-sided quotation is published by the listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will promote just and equitable principles of trade, removes impediments to, and perfect the mechanism of, a free and open market and a national market system because it enables the System to execute the Re-Opening Process at a price that is objectively established by the market for the security. The proposal would enable the listing market's quotation to be incorporated into the NBBO, which the Exchange would, in turn, utilize in its calculation of the midpoint of the NBBO. The Exchange believes doing so would result in a re-opening price that more closely reflect the market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change promotes just and equitable principles of trade because it ensures a midpoint price that the Exchange believes would accurately reflect the market for the security.

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[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Exchange Rule 1.5(ee).

[6] Orders cancelled prior to the Opening Process will not participate in the Opening Process.

[7] The following order types and instruction may not participate in the opening process: Limit Orders with a Post Only instruction, the Discretionary Range of Limit Orders, ISOs not modified by Rule 11.7(a)(1), and orders with a Minimum Execution Quantity instruction. *See* Exchange Rule 11.7(a)(2). Limit Orders with a Reserve Quantity may participate to the full extent of their displayed size and Reserve Quantity. *Id.* Limit Orders with a Discretionary Range may participate up to their ranked limit price for buy orders or down to their ranked limit price for sell orders. *Id.* All Limit Orders with a Pegged instruction, as defined in Exchange Rule 11.6(i), will be eligible for execution in the Opening Process based on their pegged prices. *Id.*

[8] Subparagraph (b) to Rule 11.7 states that the Exchange will open by performing the Opening Process in which the System will attempt to match buy and sell orders that are executable at the midpoint of the National Best Bid and Offer ("NBBO"). Furthermore, subparagraph (b) of Rule 11.7 also states that all orders executable at the midpoint of the NBBO will continue to be processed in time sequence, beginning with the order with the oldest time stamp. Matches occur until there are no remaining contra-side orders or there is an imbalance of orders. An imbalance of orders may result in orders that cannot be executed in whole or in part. Any unexecuted orders may then be placed by the System on the EDGX Book, cancelled, executed, or routed to away Trading Centers in accordance with the Users' instructions pursuant to Exchange Rule 11.11.

[9] Orders without a time-in-force ("TIF") instruction of Regular Hours Only are eligible to participate in the Re-Opening Process, but orders that include a TIF instruction of IOC or FOK, a Post Only instruction or Minimum Execution Quantity instruction will be cancelled or rejected, as applicable, and any ISO that does not include a TIF instruction of IOC or FOK will be converted into a non-ISO and be queued for participation in the Re-Opening Process. *See* Exchange Rule 11.7(e)(1).

[10] *See* Exchange Rule 1.5(cc).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will enable the Exchange to incorporate the listing market's quotation into its calculation of the midpoint of the NBBO, resulting in a re-opening price that would more closely reflect the opening market prices and conditions for that security. Therefore, the Exchange believes the proposed rule change will promote competition by enhancing the quality of the Exchange's opening process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would allow market participants to immediately realize the benefits of what may be more accurate re-opening prices. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–BatsEDGX–2016–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsEDGX–2016–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsEDGX–2016–24, and should be submitted on or before July 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14210 Filed 6–15–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9607]

Notice of Availability of the Final Environmental Assessment and Finding of No Significant Impact for the NuStar Burgos Pipeline Projects Presidential Permit Applications Review, Hidalgo County, Texas

AGENCY: Department of State.

ACTION: Notice of availability.

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[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SUMMARY: The U.S. Department of State (Department) is issuing this notice to advise the public that on June 10, 2016 the Department approved a Finding of No Significant Impact (FONSI) based on the Final Environmental Assessment (Final EA) for the NuStar Burgos Pipeline Projects Presidential Permit Applications Review. The Department prepared the Final EA consistent with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the regulations of the Council on Environmental Quality (CEQ) (40 CFR parts 1500–1508), and the Department's implementing regulations (22 CFR part 161). The Department has determined the proposed action would not have a significant effect on the environment and therefore, the preparation of an Environmental Impact Statement is not required. The FONSI is not a decision on the Presidential Permit applications. In accordance with Executive Order (E.O.) 13337, the Department will now proceed to make a determination as to whether issuance of Presidential Permits for NuStar Logistics, L.P.'s proposed cross-border pipeline facilities projects would serve the national interest. That determination process involves consideration of many factors, including foreign policy; energy security; environmental, cultural, and economic impacts; compliance with applicable law and regulations; and other issues.

DATES: The FONSI and Final EA are available as of the publication date of this notice.

ADDRESSES: Copies of the FONSI and Final EA are available at the following:

- McAllen Public Library, 4001 N. 23rd St., McAllen, TX 78504
- *http://www.state.gov/e/enr/applicant/applicants/c66757.htm*

Copies of the FONSI and Final EA may also be requested by email at *NuStarBurgosReview@state.gov* or by mail from: Burgos Project Manager, Office of Environmental Quality and Transboundary Issues (OES/EQT): Suite 2726, U.S. Department of State, 2201 C Street NW., Washington, DC 20520.

SUPPLEMENTARY INFORMATION: The Department evaluates Presidential permit applications under E.O. 13337 and E.O. 14432. E.O. 13337 delegates to the Secretary of State the President's authority to receive applications for permits for the construction, connection, operation, or maintenance of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels (except for natural gas), at the borders of the United States, and to issue or deny such Presidential Permits upon a national interest determination.

In December 2014, NuStar submitted two applications to the Department. The first application requests a new Presidential Permit to replace a 2006 Presidential Permit, that would: (1) Reflect NuStar's name change from Valero Logistics Operations, L.P. to NuStar Logistics, L.P. as the owner and operator of the 34-mile-long 8-inch outer diameter pipeline and border facilities for which NuStar was issued a Presidential Permit in 2006 (Existing Burgos Pipeline) for the import and export of light naphtha and (2) authorize the Existing Burgos Pipeline to transport a broader range of petroleum products than previously authorized, including diesel, gasoline, jet fuel, liquefied petroleum gas, and natural gas liquids. The second application requests that the Department issue a Presidential Permit for construction, connection, operation, and maintenance of a new 10-inch outer diameter pipeline and associated facilities in the same right of way as the Existing Burgos Pipeline. The second application also requests authorization for this new pipeline and associated facilities to transport the same range of products requested under the first permit application for the Existing Burgos Pipeline. Both pipelines would connect the Petroleos Mexicanos (PEMEX) Burgos Gas Plant near Reynosa, Tamaulipas, Mexico and the NuStar terminal near Edinburg, Texas in Hidalgo County, Texas at the United States-Mexico border.

Deborah Klepp,

Director, Office of Environmental Quality and Transboundary Issues, Department of State.

[FR Doc. 2016–14292 Filed 6–15–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9608]

30-Day Notice of Proposed Information Collection: ECA Exchange Student Surveys

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: The Department will accept comments from the public up to July 18, 2016.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* (202) 395–5806. Attention: Desk Officer for Department of State.

You must include the DS form number, information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrej Kolaja who may be reached on (202) 632–6412 or at *kolajaag@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* ECA Exchange Student Surveys.
- *OMB Control Number:* 1405–0210.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Educational and Cultural Affairs (ECA/PE/C/PY).
- *Form Number:* SV2012–0007.
- *Respondents:* Exchange students from foreign countries and the United States participating in Department of State sponsored programs from 2016–2019.
- *Estimated Number of Respondents:* 1800 annually.
- *Estimated Number of Responses:* 1800 annually.
- *Average Time per Response:* 15 minutes.
- *Total Estimated Burden Time:* 450 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the

use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: This collection of information is under the provisions of the Mutual Educational and Cultural Exchange Act, as amended, and the Exchange Visitor Program regulations (22 CFR part 62), as applicable. The information collected will be used by the Department to ascertain whether there are any issues that would affect the safety and well-being of exchange program participants.

Methodology: The survey will be sent electronically via the Survey Monkey tool and responses collected electronically. If a respondent requests a paper version of the survey it will be provided.

Additional information: Form SV2012–0010 (OMB Control Number 1405–0210) is being discontinued. It was intended to serve as a survey for American students overseas but it was never used and will not be used in the future.

Dated: June 9, 2016.

Bruce Armstrong,

Director, Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–14289 Filed 6–15–16; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 33 (Sub-No. 331X)]

Union Pacific Railroad Company—Discontinuance of Trackage Rights Exemption—in Pierce County, Wash.

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue approximately 0.6 miles of overhead trackage rights over a line of railroad of BNSF Railway Company (BNSF), between "Bullfrog Junction" near BNSF's Puyalloy River Bridge 8.78 and the point of connection with BNSF's Seattle Division main line at River Street Interlocking, BNSF milepost 38.94X, in Tacoma, Wash. (the Line).[1] The Line traverses United States Postal Service Zip Code 98421.

UP has certified that (1) no local traffic has moved over the Line for at least two years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service on the Line is pending either with the Board or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will be effective on July 16, 2016, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2)[2] must be filed by June 27, 2016.[3] Petitions to reopen must be filed by July 6, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Jeremy M. Berman, 1400 Douglas St., #1580, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV.*"

Decided: June 13, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2016–14275 Filed 6–15–16; 8:45 am]

BILLING CODE 4915–01–P

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[1] UP was granted trackage rights over the Line in *Union Pac. R.R.—Trackage Rights Exemption—BNSF Ry.,* FD 34881 (STB served June 20, 2006). UP states that BNSF terminated the trackage rights agreement effective May 30, 2016.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,600. *See* 49 CFR 1002.2(f)(25).

[3] Because this is a discontinued proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require an environmental review.

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Rescinded for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the approved by rule projects rescinded by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: February 1–29, 2016, and April 1–30, 2016.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, being rescinded for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and § 806.22(f) for the time period specified above:

Rescinded ABR Issued

1. Seneca Resources Corporation, Pad ID: DCNR 595 1V, ABR–20090432.R1, Bloss Township, Tioga County, Pa.; Rescind Date: February 4, 2016.
2. Seneca Resources Corporation, Pad ID: DCNR Tract 007 1V, ABR–20100613.R1, Shippen Township, Tioga County, Pa.; Rescind Date: February 4, 2016.
3. Seneca Resources Corporation, Pad ID: DCNR Tract 007 1H, ABR–201008045.R1, Shippen Township, Tioga County, Pa.; Rescind Date: February 4, 2016.
4. Seneca Resources Corporation, Pad ID: DCNR 100 Pad D 85V, ABR–201107007, McIntyre Township, Lycoming County, Pa.; Rescind Date: February 4, 2016.
5. Seneca Resources Corporation, Pad ID: DCNR 595 Pad E 70V, ABR–201108025.R1, Blossburg Borough, Tioga County, Pa.; Rescind Date: February 4, 2016.
6. Seneca Resources Corporation, Pad ID: DCNR 007 Pad G 10V, ABR–

201107006, Shippen Township, Tioga County, Pa.; Rescind Date: February 4, 2016.

7. Seneca Resources Corporation, Pad ID: DCNR 007 Pad D 11V, ABR–201107031, Delmar Township, Tioga County, Pa.; Rescind Date: February 4, 2016.

8. Seneca Resources Corporation, Pad ID: DCNR 007 Pad D, ABR–201112034, Delmar Township, Tioga County, Pa.; Rescind Date: February 4, 2016.

9. Seneca Resources Corporation, Pad ID: DCNR 007 Pad H 12V, ABR–201107034, Delmar Township, Tioga County, Pa.; Rescind Date: February 4, 2016.

10. Seneca Resources Corporation, Pad ID: DCNR 007 Pad T 20V, ABR–201107027, Gaines Township, Tioga County, Pa.; Rescind Date: February 4, 2016.

11. Seneca Resources Corporation, Pad ID: DCNR 595 Pad I 1V, ABR–201107005, Bloss Township, Tioga County, Pa.; Rescind Date: February 4, 2016.

12. Seneca Resources Corporation, Pad ID: DCNR 007 Pad K 49V, ABR–201111030, Delmar Township, Tioga County, Pa.; Rescind Date: February 4, 2016.

13. Seneca Resources Corporation, Pad ID: DCNR 100 Pad A, ABR–201110006, McInyre Township, Lycoming County, Pa.; Rescind Date: February 4, 2016.

14. Seneca Resources Corporation, Pad ID: DCNR 100 Pad L, ABR–201201032, Lewis Township, Lycoming County, Pa.; Rescind Date: February 4, 2016.

15. Seneca Resources Corporation, Pad ID: DCNR 001 Pad C, ABR–201112035, Ulysses Township, Potter County, Pa.; Rescind Date: February 4, 2016.

16. Seneca Resources Corporation, Pad ID: DCNR 007 Pad C, ABR–201103042, Shippen and Delmar Townships, Tioga County, Pa.; Rescind Date: February 4, 2016.

17. Seneca Resources Corporation, Pad ID: DCNR 001 Pad G, ABR–201102003, Sweden Township, Potter County, Pa.; Rescind Date: February 4, 2016.

18. Seneca Resources Corporation, Pad ID: DCNR 007 Pad L, ABR–201104022, Shippen Township, Tioga County, Pa.; Rescind Date: February 4, 2016.

19. Seneca Resources Corporation, Pad ID: DCNR 001 Pad E, ABR–201112037, Ulysses Township, Potter County, Pa.; Rescind Date: February 4, 2016.

20. Seneca Resources Corporation, Pad ID: DCNR 007 Pad R, ABR–201112036, Shippen and Delmar Townships, Tioga County, Pa.; Rescind Date: February 4, 2016.

21. Seneca Resources Corporation, Pad ID: Marvin 1V Pad, ABR–20090934.R1, Covington Township, Tioga County, Pa.; Rescind Date: February 4, 2016.

22. Seneca Resources Corporation, Pad ID: Rich Valley 1V Pad, ABR–20091227.R1, Shippen Township, Cameron County, Pa.; Rescind Date: February 4, 2016.

23. Seneca Resources Corporation, Pad ID: Rich Valley Pad B, ABR–201108008, Shippen Township, Cameron County, Pa.; Rescind Date: February 4, 2016.

24. Seneca Resources Corporation, Pad ID: Wilcox (TEOG 1), ABR–20090433.R1, Covington Township, Tioga County, Pa.; Rescind Date: February 4, 2016.

25. Seneca Resources Corporation, Pad ID: Wolfinger, ABR–20091229.R1, Shippen Township, Cameron County, Pa.; Rescind Date: February 4, 2016.

26. Seneca Resources Corporation, Pad ID: DCNR 595 Pad N, ABR–201109034, Bloss Township, Tioga County, Pa.; Rescind Date: April 13, 2016.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: June 9, 2016.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2016–14202 Filed 6–15–16; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES.**

DATES: April 1–30, 2016.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(f)

1. Chesapeake Appalachia, LLC, Pad ID: Joe, ABR–201108014.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: April 1, 2016.

2. Chesapeake Appalachia, LLC, Pad ID: Colcam, ABR–201108019.R1, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: April 1, 2016.

3. Chesapeake Appalachia, LLC, Pad ID: Mad Dog, ABR–201108021.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: April 1, 2016.

4. Chesapeake Appalachia, LLC, Pad ID: Adams, ABR–201108038.R1, Windham Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: April 1, 2016.

5. Chief Oil & Gas, LLC, Pad ID: Martino Drilling Pad #1, ABR–201604001, Albany Township, Bradford County, Pa.; Consumptive Use of Up to 2.5000 mgd; Approval Date: April 1, 2016.

6. SWN Production Company, LLC, Pad ID: PU–KK Valentine-Soliman Pad, ABR–201103008.R1, Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: April 1, 2016.

7. SWN Production Company, LLC, Pad ID: PU–CC Valentine-Price Pad, ABR–201104019.R1, Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: April 1, 2016.

8. Chesapeake Appalachia, LLC, Pad ID: LKM, ABR–201109014.R1, Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: April 4, 2016.

9. SWN Production Company, LLC, Pad ID: Sheldon Pad, ABR–201102028.R1, Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: April 4, 2016.

10. Chesapeake Appalachia, LLC, Pad ID: McGroarty, ABR–201109012.R1, Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: April 7, 2016.

11. Chesapeake Appalachia, LLC, Pad ID: Circle H, ABR–201109033.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: April 7, 2016.

12. Samson Exploration, LLC, Pad ID: Pardee & Curtin Lumber Co. C–12H,

ABR–201011062.R1, Shippen Township, Cameron County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: April 11, 2016.

13. Chesapeake Appalachia, LLC, Pad ID: Hillis, ABR–201108035.R1, Herrick Township and Wyalusing Borough, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: April 11, 2016.

14. Carrizo (Marcellus), LLC, Pad ID: Frystak Central Pad, ABR–201108012.R1, Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of Up to 2.100 mgd; Approval Date: April 11, 2016.

15. Carrizo (Marcellus), LLC, Pad ID: Bush Pad, ABR–201109028.R1, Forest Lake and Bridgewater Townships, Susquehanna County, Pa.; Consumptive Use of Up to 2.1000 mgd; Approval Date: April 11, 2016.

16. Chesapeake Appalachia, LLC, Pad ID: Tyler, ABR–201108034.R1, Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: April 11, 2016.

17. Chesapeake Appalachia, LLC, Pad ID: Susan, ABR–201108036.R1, Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: April 11, 2016.

18. Chesapeake Appalachia, LLC, Pad ID: Jag, ABR–201109002.R1, Franklin Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: April 11, 2016.

19. Atlas Resources, LLC, Pad ID: Lundy Well Pad, ABR–201103010.R1, Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 3.6000 mgd; Approval Date: April 15, 2016.

20. JKLM Energy, LLC, Pad ID: Headwaters 143, ABR–201604002, Ulysses Township, Potter County, Pa.; Consumptive Use of Up to 7.0000 mgd; Approval Date: April 15, 2016.

21. Talisman Energy USA Inc., Pad ID: 02–180 Dorn A, ABR–201604003, Hamilton Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: April 15, 2016.

22. Range Resources-Appalachia, LLC, Pad ID: Bobst Mountain Hunting Club #18H–#23H Drilling Pad, ABR–201103031.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: April 18, 2016.

23. Range Resources-Appalachia, LLC, Pad ID: Shipman, James Unit #1H & #2H Drilling Pad, ABR–201104014.R1, Lewis Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: April 18, 2016.

24. Range Resources-Appalachia, LLC, Pad ID: Shipman-Goodwill Unit #1H–#4H Drilling Pad, ABR–201104016.R1, Lewis Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: April 18, 2016.

25. Chesapeake Appalachia, LLC, Pad ID: Smurkoski, ABR–201109032.R1, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: April 22, 2016.

26. Chesapeake Appalachia, LLC, Pad ID: Stone, ABR–201109035.R1, Tuscarora Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: April 22, 2016.

27. EXCO Resources (PA), LLC, Pad ID: Arthur Pad, ABR–201103018.R1, Franklin Township, Lycoming County, Pa.; Consumptive Use of Up to 8.0000 mgd; Approval Date: April 22, 2016.

28. Seneca Resources Corporation, Pad ID: DCNR 100 PAD B, ABR–201107035.R1, McIntyre Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: April 22, 2016.

29. Seneca Resources Corporation, Pad ID: DCNR 595 Pad G, ABR–201107033.R1, Blossburg Borough, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: April 22, 2016.

30. Seneca Resources Corporation, Pad ID: Rich Valley Pad E, ABR–201107032.R1, Shippen Township, Cameron County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: April 22, 2016.

31. Talisman Energy USA Inc., Pad ID: 05 011 Alderson V, ABR–201104008.R1, Pike Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: April 22, 2016.

32. Carrizo (Marcellus), LLC, Pad ID: Cowfer—1, ABR–20090417.R1, Rush Township, Centre County, Pa.; Consumptive Use of Up to 0.9990 mgd; Approval Date: April 27, 2016.

33. Chesapeake Appalachia, LLC, Pad ID: Brule, ABR–201110005.R1, Elkland Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: April 27, 2016.

34. Cabot Oil & Gas Corporation, Pad ID: Dobrosielski P1, ABR–201107051.R1, Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: April 28, 2016.

35. Cabot Oil & Gas Corporation, Pad ID: Mogridge P1, ABR–201108005.R1, Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: April 28, 2016.

36. Cabot Oil & Gas Corporation, Pad ID: CorbinJ P1, ABR–201108049.R1, Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: April 28, 2016.

37. Chesapeake Appalachia, LLC, Pad ID: Nicholson, ABR–201110022.R1, Nicholson Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: April 29, 2016.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: June 9, 2016.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2016–14201 Filed 6–15–16; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on a Parcel Swap at Belfast Municipal Airport in Belfast, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: Under our provisions this notice is being given that the FAA is considering a request from the City of Belfast in Belfast, ME to swap two parcels of land between the City of Belfast and the State of Maine Department of Defense and Veterans Services (Military Bureau) for the construction of a parallel taxiway at Belfast Municipal Airport in Belfast, ME.

The Airport wishes to construct a parallel taxiway for Runway 15–33, and in order for the taxiway to be constructed to FAA standards, the Airport needs to acquire land from the adjacent landholder, the Military Bureau. The Military Bureau indicated that from a practical point, a land swap would be the most efficient option for them to release land to the Airport. The parcel the Airport is seeking to release and dispose of is currently not needed for aviation purposes. Both the City of Belfast and the Military Bureau have obtained the proper approvals from the Belfast City Council and the Maine State Legislature to release the two parcels of land in April and October of 2015, respectively.

DATES: Comments must be received on or before July 18, 2016.

ADDRESSES: You may send comments using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* and follow the instructions on providing comments.
- *Fax:* 202–493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W 12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 1200 District Avenue, Burlington, Massachusetts, Telephone 781–238–7618.

Issued in Burlington, Massachusetts, on April 19, 2016.

Mary T. Walsh,

Manager, Airports Division.

[FR Doc. 2016–13935 Filed 6–15–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Tenth Meeting: RTCA Special Committee 228 (SC–228) Minimum Operational Performance Standards for Unmanned Aircraft Systems

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of Tenth RTCA Special Committee 228 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Tenth RTCA Special Committee 228 meeting.

DATES: The meeting will be held July 14–15, 2016 from 9:00 a.m.–4:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Alfred Secen, Program Director, RTCA, Inc., *asecen@rtca.org*, (202) 330–0647.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 228. The agenda will include the following:

Thursday–Friday, July 14–15, 2016

1. Welcome/Introductions/Administrative Remarks/SC–228 Participation Guidelines.
   a. Reading of the Public Announcement by the DFO.
   b. Reading of the RTCA Proprietary References Policy.
2. Agenda Overview.
3. Review/Approval of Minutes from Plenary #9.
4. EUROCAE WG–73 Update.
5. Review of RTCA Steering Committee Activity.
6. Report from WG–1 for DAA progress on the DAA MOPS.
7. Report from WG–2, C2.
8. Action Item Review.
9. Other Business.
10. Date, Place and Time of Next Meeting(s).
11. Adjourn Plenary.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 13, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.

[FR Doc. 2016–14269 Filed 6–15–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0160]

Agency Information Collection Activities; Extension of an Approved Information Collection: Designation of Agents, Motor Carriers, Brokers and Freight Forwarders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval and invites public comment. The FMCSA requests approval to extend an ICR entitled, "Designation of Agents, Motor Carriers, Brokers and Freight Forwarders," which is used to provide registered motor carriers, property brokers, and freight forwarders a means of meeting process agent requirements.

DATES: We must receive your comments on or before August 15, 2016.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2016–0160 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8-794.pdf.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the "help" section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Ms. Tura Gatling, Office of Registration and Safety Information, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone Number: (202) 385–2412; Email Address: *tura.gatling@dot.gov.* Office hours are from 8:00 a.m. to 5:00 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Transportation (Secretary) is authorized to register motor carriers under the provisions of 49 U.S.C. 13902; freight forwarders under the provisions of 49 U.S.C. 13903; and property brokers under provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. 13901. The Secretary has delegated authority pertaining to these registration requirements to the FMCSA pursuant to 49 CFR 1.73(a)(5).

Registered motor carriers, brokers and freight forwarders must designate an agent on whom service of notices in proceedings before the Secretary may be made (49 U.S.C. 13303). Registered motor carriers must also designate an agent for every State in which they operate and traverse in the United States during such operations, agents on whom process issued by a court may be served in actions brought against the registered transportation entity (49 U.S.C. 13304, 49 CFR 366.4). Every broker shall make a designation for each State in which its offices are located or in which contracts are written (49 U.S.C. 13304, 49 CFR 366.4). Regulations governing the designation of process agents are found at 49 CFR part 366. This designation is filed with the FMCSA on Form BOC–3, "Designation of Agents for Service of Process."

Title: Designation of Agents, Motor Carriers, Brokers and Freight Forwarders.

OMB Control Number: 2126–0015.

Type of Request: Extension of a currently approved collection.

Respondents: Motor carriers, freight forwarders and brokers.

Estimated Number of Respondents: 110,371 respondents in the first year [35,000 currently approved applicants plus 75,371 new entrants].

Estimated Time per Response: 10 minutes.

Expiration Date: November 30, 2016.

Frequency of Response: Form BOC–3 must be filed by all motor carriers, freight forwarders and brokers when the transportation entity first registers with the FMCSA. All brokers shall make a designation for each State in which it has an office or in which contracts are written. Subsequent filings are made only if the motor carrier, broker or freight forwarder changes process agents.

Estimated Total Annual Burden: 18,395 hours [110,371 respondents times 10 minutes per response].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: June 10, 2016.

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2016–14241 Filed 6–15–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–[2015–0343]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA confirms its decision to exempt 68 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on April 16, 2016. The exemptions expire on April 16, 2018.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On March 16, 2016, FMCSA published a notice of receipt of Federal diabetes exemption applications from 68 individuals and requested comments from the public (81 FR 14197. The public comment period closed on April 15, 2016, and 2 comments were received.

FMCSA has evaluated the eligibility of the 68 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 68 applicants have had ITDM over a range of 1 to 51 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the March 16, 2016, **Federal Register** notice and they will not be repeated in this notice.

III. Discussion of Comments

FMCSA received two comments in this proceeding. Crystal Ramos and an anonymous commenter believe that the exemptions should be granted.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Conclusion

Based upon its evaluation of the 68 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 949 CFR 391.64(b)):

Korey D. Adams (MO)
Michael D. Alley (OR)
Jerry J. Altenburg (WI)
Juanita K. Anderson (MN)
Alan D. Bahlmann (IN)
William A. Ball, Jr. (WV)
John F. Beatrice (NH)
Benjamin J. Beitelspacher (SD)
Russell E. Bjerkness (MN)
Chase L. Blankenship (OK)
Samuel E. Bostic (WV)
Eric K. Caldwell (OH)
Michael J. Chevalier, Jr. (NJ)
James R. Cockerham (IN)
Darrell L. Coleman (TX)
Michael R. Conley (WI)
James D. Deardorff (WA)
Ivan R. Edsall (KS)
Steven W. Engel (CO)
Samuel M. Feaganes, Jr. (VA)
Jerry A. Fogel (WI)
William J. Garrett (SD)
Kevin E. Griebel (SD)
Martin R. Hair (CT)
Justin M. Herb (IN)
Terry D. Hescock (OR)
Brandon Heselton (IL)
Arrington Hughes (DC)
Brian K. Hyler (WI)
James A. Iozia (NJ)
Joshua D. Jaramillo (WA)
Jerry M. Kilpatrick (AL)
Rex O. King (IA)
Edward D. Krager (PA)
Kevin K. Leavey (NJ)
Michael P. Leggett (WV)
Thomas J. Liddy (NY)
Gregory S. Luce, Jr. (OH)
Renee N. Lycksell (WA)
Andrew Majkowicz (NJ)
Raymond L. Makings (KS)
Daniel J. Mandell (NC)
John D. McGinley, Jr. (CA)
Denise R. McKelvey (CT)
Gareth L. Miller (OH)
Victor Moore, Jr. (MO)
Jimmy C. Morcom (MI)
Peter J. Niedzwiecki (PA)
Kevin R. OToole (WI)
Robert J. Paitsel (WV)
Kameka D. Palmer (WI)
Neal M. Quinton, Jr. (MA)
Howard G. Rau (MD)
Andrew Reid (IN)
Brett M. Rice (PA)
Mark A. Rinehardt (NC)
Sholom Rub (NY)
Jeremy M. Samson (IA)
David J. Scimecca (NY)
Blane Tor (NJ)
Samuel C. Tracy (WA)
Allen B. Treadwell (AL)
Terry L. Underwood, Jr. (VA)
Aaron M. Vanlanduit (MO)
Paul R. Whitehead (NM)
Grady E. Wilkins (MD)
Joseph A. Wilson, Sr. (MA)
Michael A. Zuke, Sr. (NY)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 10, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–14240 Filed 6–15–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0028]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 37 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before July 18, 2016. All comments will be investigated by FMCSA. The exemptions will be issued the day after the comment period closes.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2016–0028 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 37 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Dennis J. Ameling

Mr. Ameling, 54, has had a dense corneal scar in his right eye since childhood. The visual acuity in his right eye is no light perception, and his left eye, 20/20. Following an examination in 2015, his optometrist stated, "My opinion is that his vision is more than capable to drive a commercial vehicle out of state." Mr. Ameling reported that he has driven straight trucks for 18 years, accumulating 1.44 million miles and tractor-trailer combinations for 21 years, accumulating 2.1 million miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 10 miles per hour (mph).

Daniel A. Bahm

Mr. Bahm, 50, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is count fingers, and in his left eye, 20/20. Following an examination in 2016, his ophthalmologist stated, "According to our exam and his previous visual field test Mr. Bahm has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Bahm reported that he has driven straight trucks for 33 years, accumulating 16,500 miles and tractor-trailer combinations for 14 years, accumulating 2.1 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John P. Brooks

Mr. Brooks, 48, has complete loss of vision in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is light perception, and in his left eye, 20/20. Following an examination in 2016, his ophthalmologist stated, "In my opinion, he does have the vision required to operate a commercial vehicle." Mr. Brooks reported that he has driven straight trucks for 6 years, accumulating 240,000 miles and tractor-trailer combinations for 18 years, accumulating 144,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes but two convictions in a CMV. In the first incidence, he exceeded the speed limit by 12 mph and in the second incidence; according to the citation, he "disregarded an official traffic control device."

Joshua L. Cecotti

Mr. Cecotti, 33, has had vision loss in his right eye since birth. The visual acuity in his right eye is 20/150, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "It is also the opinion of both Dr. Raymond A. Powell and me [*sic*] that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Cecotti reported that he has driven straight trucks for 15 years, accumulating 360,000 miles, and tractor-trailer combinations for 15 years, accumulating 285,000 miles. He holds an operator's license from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violation in a CMV.

Derrick L. Cowan

Mr. Cowan, 38, has a prosthetic left eye due to a traumatic incident in 1999. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2016, his optometrist stated, "Based on my findings I believe Mr. Cowan should have no visual problem operating a commercial vehicle." Mr. Cowan reported that he has driven straight trucks for 9 years, accumulating 176,400 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years show no crashes and no convictions for moving violations in a CMV.

Ryan E. Cox

Mr. Cox, 40, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2016, his optometrist stated "Ryan has a good driving record, so in my opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Cox reported that he has driven straight trucks for 20 years, accumulating 100,000 miles and tractor-trailer combinations for 20 years, accumulating 100,000 miles. He holds an operator's license from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronald A. Donsbach

Mr. Donsbach, 52, has had a cataract in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2015, his optometrist stated, "It is in my opinion that Ronald has sufficient vision to perform the driving tasks required for him to operate his commercial vehicle." Mr. Donsbach reported that he has driven straight trucks for 4 years, accumulating 152,000 miles. He holds an operator's license from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kenneth W. Erickson

Mr. Erickson, 78, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2016, his optometrist stated, "Kenneth definitely has sufficient vision to operate a commercial vehicle." Mr. Erickson reported that he has driven straight trucks for 62 years, accumulating 930,000 miles, tractor-trailer combinations for 34 years, accumulating 1.97 million miles, and buses for 8 years, accumulating 800,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Anthony A. Gusa

Mr. Gusa, 59, has a corneal scar in his left eye due to a traumatic incident in 1969. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2016, his optometrist stated, "In my opinion, Anthony has fine binocular vision and is totally capable of operating a commercial vehicle." Mr. Gusa reported that he has driven straight trucks for 9 years, accumulating 90,000 miles and tractor-trailer combinations for 13 years, accumulating 585,000 miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Pedro Guzman

Mr. Guzman, 39, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2016, his optometrist stated, "In my opinion, Pedro has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Guzman reported that he has driven straight trucks for 8 years, accumulating 30,720 miles. He holds an operator's license from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Bradley C. Helsel

Mr. Helsel, 59, has had phthisis bulbi in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2016, his ophthalmologist stated, "In my medical opinion, the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Helsel reported that he has driven straight trucks for 15 years, accumulating 450,000 miles, and tractor-trailer combinations for 12 years, accumulating 840,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Titus E. Hostetler

Mr. Hostetler, 47, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/150, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "In My Medical Opinion [*sic*], Mr. Hostetler has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Hostetler reported that he has driven straight trucks for 29 years, accumulating 290,000 miles, and tractor-trailer combinations for 29 years, accumulating 290,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Darrell E. Hunter

Mr. Hunter, 50, has a retinal detachment in his left eye due to a traumatic incident in 1998. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2016, his ophthalmologist stated, "I do believe that he has vision sufficient to operate a commercial vehicle." Mr. Hunter reported that he has driven tractor-trailer combinations for 15 years, accumulating 900,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles R. Johnson

Mr. Johnson, 54, has had central serous chorioretinopathy in his left eye since 1991. The visual acuity in his right eye is 20/20, and in his left eye 20/200. Following an examination in 2016, his ophthalmologist stated, "In my opinion, this patient continues to have sufficient vision to perform his job, which requires operating a commercial vehicle." Mr. Johnson reported that he has driven straight trucks for 27 years, accumulating 54,000 miles, and tractor-trailer combinations for 27 years, accumulating 54,000 miles. He holds a Class A CDL from Minnesota. His driving record the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kenneth B. Julian

Mr. Julian, 55, has had a prosthetic left eye since 2013. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2016, his optometrist stated, "In my medical opinion Kenneth Julian has sufficient vision to operate a commercial vehicle." Mr. Julian reported that he has driven tractor-trailer combinations for 18 years, accumulating 1.03 million miles. He holds an operator's license from Oklahoma. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Walter J. Jurczak

Mr. Jurczak, 50, has had a prosthetic left eye since 2000. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2016, his optometrist stated, "The level of vision he is achieving in his right eye is satisfactory to safely operate a commercial vehicle." Mr. Jurczak reported that he has driven straight trucks for 28 years, accumulating 140,000 miles, tractor-trailer combinations for 28 years, accumulating 56,000 miles, and buses for 28 years, accumulating 28,000 miles. He holds a Class A CDL from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Keith Kebschull

Mr. Kebschull, 51, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/30, and in his left eye, hand motion. Following an examination in 2015, his ophthalmologist stated, "With these findings and his excellent 27 year commercial driving record in my medical opinion Mr. Kebschull has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Kebschull reported that he has driven straight trucks for 27 years, accumulating 444,150 miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeffrey N. Lake

Mr. Lake, 54, has complete loss of vision in his right eye due to a traumatic incident in 1974. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2015, his ophthalmologist stated, "He is completely capable of driving commercially with his good eye which is 20/20 uncorrected." Mr. Lake reported that he has driven straight trucks for 36 years, accumulating 1.08 million miles, and tractor-trailer combinations for 36 years, accumulating 3.6 million miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jayme M. Leonard

Mr. Leonard, 54, has a retinal detachment in his right eye due to a traumatic incident in 1976. The visual acuity in his right eye is 20/80, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "Since Jayme has been living with this vision damage for over 40 years and everything is stable, it is my opinion that he should continue to have a CDL driving [*sic*] license and is safe to be driving a commercial vehicle." Mr. Leonard reported that he has driven straight trucks for 3 years, accumulating 37,440 miles. He holds a Class B CDL from Vermont. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Christopher E. Madsen

Mr. Madsen, 35, has had optic nerve hypoplasia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2016, his optometrist stated, "Due to the congenital nature of Chris's visual problems, he has learned to perform all activities of daily life and work with just the use of his right eye. He performs as well with his one eye as most of us do with two. If anything, it is his color vision deficiency which presents the greatest obstacle and I cannot change that. I feel this should be the only thing taken into consideration with whether [*sic*] or not he is issued a commercial driver's license." Mr. Madsen reported that he has driven tractor-trailer combinations for 11 years accumulating 999,999 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James K. Matthey

Mr. Matthey, 59, has had ptosis in his right eye since 1991. The visual acuity in his right eye is light perception, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "It is my opinion that given, James longstanding nature of the ptosis of his right eyelid and his ability to compensate for this loss over the past 25 years, he possesses sufficient visual ability to perform the driving tasks required to operate a commercial vehicle." Mr. Matthey reported that he has driven straight trucks for 36 years, accumulating 720,000 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Brian D. McClanahan

Mr. McClanahan, 45, has had strabismic amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "Patient has sufficient vision to perform driving tasks required to operate commercial vehicle." Mr. McClanahan reported that he has driven straight trucks for 18 years, accumulating 216,000 miles, and tractor-trailer combinations for 18 years, accumulating 129,600 miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark Mitchell

Mr. Mitchell, 54, has had macular telangiectasia in his left eye since 2006. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2016, his optometrist stated, "In my opinion Mr. Mitchell has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Mitchell reported that he has driven straight trucks for 15 years, accumulating 450,000 miles. He holds a chauffer's license from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joel E. Nundahl

Mr. Nundahl, 62, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "In my medical opinion Mr. Joel Nundahl is safe to perform the driving tasks required to operate a commercial vehicle." Mr. Nundahl reported that he has driven tractor-trailer combinations for 39 years, accumulating 4.29 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kent A. Perry

Mr. Perry, 56, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/40, and in his left eye, hand motion. Following an examination in 2015, his optometrist stated, "I believe that Mr. Perry now has sufficient vision following his cataract surgery to operate a commercial vehicle." Mr. Perry reported that he has driven straight trucks for 31 years, accumulating 310,000 miles. He holds an operator's license from Wyoming. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard C. Powers

Mr. Powers, 36, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/80. Following an examination in 2015, his optometrist stated, "From a visual standpoint, he is sufficient to operate a commercial vehicle." Mr. Powers reported that he has driven straight trucks for 2 years, accumulating 160,000 miles, and tractor-trailer combinations for 8 years, accumulating 800,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he was speeding 11–15 mph over the speed limit.

Mario A. Quezada

Mr. Quezada, 60, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, "I certify that Mr. Quezada has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Quezada reported that he has driven tractor-trailer combinations for 27 years, accumulating 1.89 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he made an improper left turn from the wrong lane at an intersection.

Guadalupe Reyes

Mr. Reyes, 47, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/80. Following an examination in 2015, his ophthalmologist stated, "Mr. Reyes has demonstrated his ability to differentiate colors as seen on traffic signals, and it is of my opinion that Mr. Reyes has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Reyes reported that he has driven straight trucks for 23 years, accumulating 1.5 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

J.B. Rodriguez Mata

Mr. Rodriguez Mata, 52, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2016, his optometrist stated, "In my medical opinion, patient J. Bernardo Rodriguez . . . has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Rodriguez Mata reported that he has driven straight trucks for 15 years, accumulating 2.4 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joseph Sais

Mr. Sais, 38, has had refractive amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2015, his optometrist stated, "I examined Mr. Joseph Saiz (DOB: 05/03/1977) on 11/11/2015 and found his visual finding in the right eye to meet or surpass the criteria to drive a commercial motor vehicle." Mr. Sais reported that he has driven straight trucks for 7 years, accumulating 3,500 miles, and tractor-trailer combinations for 7 years, accumulating 3,500 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John M. Sexton

Mr. Sexton, 50, has had refractive amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, hand motion. Following an examination in 2015, his optometrist stated, "Although OS has decreased acuity from a lifelong [*sic*] condition of refractive amblyopia, I feel that John has sufficient vision to perform the driving tasks required to operate a commercial vehicle as he has fully adapted to the condition." Mr. Sexton reported that he has driven straight trucks for 5 years accumulating 25,000 miles, and tractor-trailer combinations for 31 years, accumulating 3.2 million miles. He holds a Class CA CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Blaine R. Sherfinski

Mr. Sherfinski, 60, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/600, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, "It is my opinion that Mr. Sherfinski has sufficient vision to perform the driving tasks required for operating a commercial vehicle." Mr. Sherfinski reported that he has driven buses for 3 years, accumulating 45,000 miles. He holds a Class B CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Chad M. Smith

Mr. Smith, 34, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2015, his optometrist stated, "In my medical opinion . . . Chad has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Smith reported that he has driven straight trucks for 7 years, accumulating 24,500 miles, and tractor-trailer combinations for 2 years, accumulating 3,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Corey L. Spring

Mr. Spring, 43, has a macular scar in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2016, his optometrist stated, "Mr. Corey Spring . . . has good enough vision to operate a commercial vehicle & [*sic*] meets the VF's criteria of at least 120 * [*sic*] in each eye." Mr. Spring reported that he has driven tractor-trailer combinations for 21 years, accumulating 3.15 million miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Leslie D. Wallace

Mr. Wallace, 50, has a retinal detachment in his right eye due to a traumatic incident in 2006. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, "He doesn't have any problem with his color vision and he doesn't have any physical limitations or medical conditions . . . I see no reason to believe the he would have problem with commercial vehicles." Mr. Wallace reported that he has driven straight trucks for 30 years, accumulating 600,000 miles, and tractor-trailer combinations for 30 years, accumulating 600,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James C. Wechsler

Mr. Wechsler, 45, has had refractive amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/15. Following an examination in 2015, his optometrist stated, "It is my opinion that James's [*sic*] vision and visual deficiency is stable and he has more than sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Wechsler reported that he has driven straight trucks for 26 years, accumulating 390,000 miles, and tractor-trailer combinations for 26 years, accumulating 2.21 million miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Danny A. Wright

Danny A. Wright, 39, has optic nerve damage in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2016, his optometrist stated, "In summation, it is my professional opinion that Danny should have sufficient vision to perform the driving tasks required to operate his commercial vehicle." Mr. Wright reported that he has driven straight trucks for 17 years, accumulating 20,800 miles. He holds a chauffeur's license from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

III. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number FMCSA–2016–0028 in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert the docket number FMCSA–2016–0028 in the "Keyword" box and click "Search." Next, click "Open Docket Folder" button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: June 10, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–14242 Filed 6–15–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2015–0339]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA confirms its decision to exempt 56 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on January 21, 2016. The exemptions expire on January 21, 2018.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On December 21, 2015, FMCSA published a notice of receipt of Federal diabetes exemption applications from 56 individuals and requested comments from the public (80 FR 79402). The public comment period closed on January 20, 2016.

FMCSA has evaluated the eligibility of the 56 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

III. Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 56 applicants have had ITDM over a range of 1 to 57 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the December 21, 2015, **Federal Register** notice and they will not be repeated in this notice.

IV. Discussion of Comments

FMCSA received no comments in this proceeding.

V. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

VI. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VII. Conclusion

Based upon its evaluation of the 56 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 49 CFR 391.64(b):

James R. Bishop (WV)
Randall S. Blight (MI)
George S. Callahan (IN)
Jeffrey L. Carlson (MN)
Myron D. Collins (CO)
Paul E. Costello (NE)
Daniel J. Cramer (WI)
Cyrus G. Davenport, Jr. (VA)
Pete J. Dewitt (CA)
Frank A. Earullo (IL)
Hugh R. Ferguson (MA)
James A. Graczyk (NY)
Isadios P. Harris (NJ)
David A. Heine (ND)
Nathaniel P. Hetherington (PA)
Surlloyd D. Hilson (FL)
Terrence T. Holocher (IN)
Logan L. Jackson (CA)
Elie Jean (NJ)
Dean L. Jerpseth (MN)
Paul T. Laak (WA)
Terrence P. Lescamela (MI)
Janet M. Lind (SD)
Russell D. Logan (NC)
Tommaso Maccarrone (NJ)
Larry D. May (AR)
Raymond Mendez (NY)
Anthony J. Miller (PA)
Marlin D. Milliken (PA)
Charles R. Mims (AL)
Gustavo A. Mojica (FL)
Charles E. Otts, III (NE)
Rajesh Patel (NJ)
Timothy S. Pederson (SD)
Carlos J. Perez-Beltran (PA)
Bruce J. Pfeffer (IA)
Seth A. Piel (CO)
Carlos M. Pinto (NY)
Peter C. Poungded (CA)
Michael D. Prestby (IA)
Gary L. Ray (AR)
Thomas L. Rice (TN)
Wilson Rosado (IN)
Jason G. Ross (CA)
Timothy P. Ross (FL)
Sandra J. Sexton (IL)
Jacob A. Small (NJ)
Gregory T. Smith (WY)
Randy Smith (MD)
Timmy J. Tarnowski (MN)
Dale L. Vaughan (MO)
Tyler J. Vogt (IL)
Christoph Wagner (NJ)
Russell J. Welke (WI)
Donald L. Westbrook (PA)
David M. Wike (NC)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 8, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–14246 Filed 6–15–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0027; Notice No. 2016–9]

Hazardous Materials: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requests (ICRs) discussed below will be forwarded to the Office of Management and Budget (OMB) for renewal and extension. These ICRs describe the nature of the information collections and their expected burdens. A **Federal Register** notice with a 60-day comment period soliciting comments on these ICRs was published in the **Federal Register** on March 24, 2016 [81 FR 15785] under Docket No. PHMSA–2016–0027 (Notice No. 2016–2). PHMSA did not receive any comments in response to the March 24, 2016 notice.

DATES: Interested persons are invited to submit comments on, or before July 18, 2016.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, by mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for DOT–PHMSA, 725 17th Street NW., Washington, DC 20503, by fax, 202–395–5806, or by email, to *OIRA_Submission@omb.eop.gov.* Comments should refer to the information collection by title and/or OMB Control Number.

We invite comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division (PHH–12), U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires Federal agencies to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in 49 CFR parts 172, 173, 173, 174, 175, 176, 177, 178 and 180 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB Control Number; (3) abstract of the information collection activity; (4) description of affected persons; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approvals in the **Federal Register**.

PHMSA requests comments on the following information collections:

Title: Inspection and Testing of Portable Tanks and Intermediate Bulk Containers.

OMB Control Number: 2137–0018.

Summary: This information collection pertains to provisions for documenting qualifications, inspections, tests, and approvals pertaining to the manufacture and use of portable tanks and intermediate bulk containers under various provisions of the HMR. It is necessary to ascertain whether portable tanks and intermediate bulk containers have been qualified, inspected, and retested in accordance with the HMR. The information is used to verify that certain portable tanks and intermediate bulk containers meet required performance standards prior to their being authorized for use, and to document periodic requalification and testing to ensure the packagings have not deteriorated due to age or physical abuse to a degree that would render them unsafe for the transportation of hazardous materials.

Affected Public: Manufacturers and owners of portable tanks and intermediate bulk containers.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 8,770.

Total Annual Responses: 86,100.

Total Annual Burden Hours: 66,390.

Frequency of collection: On occasion.

Title: Hazardous Materials Shipping Papers and Emergency Response Information.

OMB Control Number: 2137–0034.

Summary: This information collection is for the requirement to provide a shipping paper and emergency response information with shipments of hazardous materials. Shipping papers are considered to be a basic communication tool relative to the transportation of hazardous materials. The definition of a shipping paper in 49 CFR 171.8 includes a shipping order, bill of lading, manifest, or other shipping document serving a similar purpose and containing the information required by §§ 172.202, 172.203, and 172.204 of the HMR. A shipping paper with emergency response information must accompany most hazardous materials shipments and be readily available at all times during transportation.

Shipping papers serve as the principal source of information regarding the presence of hazardous materials, identification, quantity, and emergency response procedures. They also serve as the source of information for compliance with other requirements, such as the placement of rail cars containing different hazardous materials in trains; prevent the loading of poisons with foodstuffs; maintain the separation of incompatible hazardous materials; and limit the amount of radioactive materials that may be transported in a vehicle or aircraft. Shipping papers and emergency response information also serve as a means of notifying transport workers that hazardous materials are present. Most importantly, shipping papers serve as a principal means of identifying hazardous materials during transportation emergencies. Firefighters, police, and other emergency response personnel are trained to obtain the DOT shipping papers and emergency response information when responding to hazardous materials transportation emergencies. The availability of accurate information concerning hazardous materials being transported significantly improves response efforts in these types of emergencies.

It should also be noted that PHMSA recently completed a collection of information under the Hazardous Materials Automated Cargo Communications for Efficient and Safe Shipments (HM–ACCESS) pilot program. The burden hours posted in this notice no longer reflect the collection of information related to the HM–ACCESS pilot program.

Affected Public: Shippers and carriers of hazardous materials in commerce.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 260,000.

Total Annual Responses: 185,000,000.

Total Annual Burden Hours: 4,625,846.

Frequency of Collection: On occasion.

Title: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service.

OMB Control Number: 2137–0595.

Summary: These information collection and recordkeeping requirements pertain to the manufacture, certification, inspection, repair, maintenance, and operation of certain DOT specification and non-specification cargo tank motor vehicles used to transport liquefied compressed gases. These requirements are intended to ensure cargo tank motor vehicles used to transport liquefied compressed gases are operated safely, and to minimize the potential for catastrophic releases during unloading and loading operations. They include: (1) Requirements for operators of cargo tank motor vehicles in liquefied compressed gas service to develop operating procedures applicable to unloading operations and carry the operating procedures on each vehicle; (2) inspection, maintenance, marking, and testing requirements for the cargo tank discharge system, including delivery hose assemblies; and (3) requirements for emergency discharge control equipment on certain cargo tank motor vehicles transporting liquefied compressed gases that must be installed and certified by a Registered Inspector.

Affected Public: Carriers in liquefied compressed gas service, manufacturers and repairers.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 6,958.

Total Annual Responses: 920,538.

Total Annual Burden Hours: 200,914.

Frequency of collection: On occasion.

Title: Inspection and Testing of Meter Provers.

OMB Control Number: 2137–0620.

Summary: This information collection and recordkeeping burden pertains to the requirements for the use, inspection, and maintenance of mechanical displacement meter provers (meter provers) used to check the accurate flow of liquid hazardous materials into bulk packagings, such as portable tanks and cargo tank motor vehicles, under the HMR. These meter provers are used to ensure that the proper amount of liquid hazardous materials is being loaded and unloaded involving bulk packagings, such as cargo tanks and portable tanks. These meter provers consist of a gauge and several pipes that always contain small amounts of the liquid hazardous material in the pipes as residual material, and, therefore, must be inspected and maintained in accordance with the HMR to ensure they are in proper calibration and working order. These meter provers are not subject to the specification testing and inspection requirements in part 178. However, these meter provers must be visually inspected annually and hydrostatic pressure tested every five years in order to ensure they are properly working as specified in § 173.5a of the HMR. Therefore, this information collection requires that:

(1) Each meter prover must undergo and pass an external visual inspection annually to ensure that the meter provers used in the flow of liquid hazardous materials into bulk packagings are accurate and in conformance with the performance standards in the HMR.

(2) Each meter prover must undergo and pass a hydrostatic pressure test at least every five years to ensure that the meter provers used in the flow of liquid hazardous materials into bulk packagings are accurate and in conformance with the performance standards in the HMR.

(3) Each meter prover must successfully complete the test and inspection and must be marked in accordance with §§ 180.415(b) and 173.5a.

(4) Each owner must retain a record of the most recent visual inspection and pressure test until the meter prover is requalified.

Affected Public: Owners of meter provers used to measure liquid hazardous materials flow into bulk packagings such as cargo tanks and portable tanks.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 50.

Total Annual Responses: 250.

Total Annual Burden Hours: 175.

Frequency of collection: On occasion.

Signed in Washington, DC, on June 10, 2016.

William S. Schoonover,

Deputy Associate Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016–14187 Filed 6–15–16; 8:45 am]

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Part II

Department of Education

34 CFR Parts 30, 668, 674, et al.

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 30, 668, 674, 682, 685, and 686

RIN 1840–AD19

[Docket ID ED–2015–OPE–0103]

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program to establish a new Federal standard and a process for determining whether a borrower has a defense to repayment on a loan based on an act or omission of a school. We propose to also amend the Direct Loan Program regulations by prohibiting participating schools from using certain contractual provisions regarding dispute resolution processes, such as mandatory pre-dispute arbitration agreements or class action waivers, and to require certain notifications and disclosures by schools regarding their use of arbitration. We propose to also amend the Direct Loan Program regulations to codify our current policy regarding the impact that discharges have on the 150 percent Direct Subsidized Loan Limit. We also propose to amend the Student Assistance General Provisions regulations to revise the financial responsibility standards and add disclosure requirements for schools. Finally, we propose to amend the discharge provisions in the Federal Perkins Loan (Perkins Loan), Direct Loan, Federal Family Education Loan (FFEL), and Teacher Education Assistance for College and Higher Education (TEACH) Grant programs. The proposed changes would provide transparency, clarity, and ease of administration to current and new regulations and protect students, the Federal government, and taxpayers against potential school liabilities resulting from borrower defenses.

DATES: We must receive your comments on or before August 1, 2016.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. *Please do not submit the PDF in a scanned format.* Using a print-to-PDF format allows the U.S. Department of Education (the Department) to electronically search and copy certain portions of your submissions.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Help."
- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the proposed regulations, address them to Jean-Didier Gaina, U.S. Department of Education, 400 Maryland Ave. SW., Room 6W232B, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For further information related to borrower defenses, Barbara Hoblitzell at (202) 453–7583 or by email at: *Barbara.Hoblitzell@ed.gov*. For further information related to false certification and closed school loan discharges, Brian Smith at (202) 453–7440 or by email at: *Brian.Smith@ed.gov*. For further information regarding institutional accountability, John Kolotos or Greg Martin at (202) 453–7646 or (202) 453–7535 or by email at: *John.Kolotos@ed.gov* or *Gregory.Martin@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action

The purpose of the borrower defense regulation is to protect student loan borrowers from misleading, deceitful, and predatory practices of, and failures to fulfill contractual promises by, institutions participating in the Department's student aid programs. Most postsecondary institutions provide a high-quality education that equips students with new knowledge and skills and prepares them for their careers. However, when postsecondary institutions make false and misleading statements to students or prospective students about school or career outcomes or financing needed to pay for those programs, or fail to fulfill specific contractual promises regarding program offerings or educational services, student loan borrowers may be eligible for discharge of their Federal loans.

The proposed regulations would give students access to consistent, clear, fair, and transparent processes to seek debt relief; protect taxpayers by requiring that financially risky institutions are prepared to take responsibility for losses to the government for discharges of and repayments for Federal student loans; provide due process for students and institutions; and warn students, using plain language issued by the Department, about proprietary schools at which the typical student experiences poor loan repayment outcomes—defined in these proposed regulations as a proprietary school with a loan repayment rate that is less than or equal to zero percent, which means that the typical borrower has not paid down at least a dollar on his or her loans—so that students can make more informed enrollment and financing decisions.

Section 455(h) of the Higher Education Act of 1965, as amended (HEA), authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan. Current regulations at § 685.206(c) governing defenses to repayment have been in place since 1995 but, until recently, rarely used. Those regulations specify that a borrower may assert as a defense to repayment any "act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law."

In response to the collapse of Corinthian Colleges (Corinthian) and the flood of borrower defense claims submitted by Corinthian students stemming from the school's misconduct, the Secretary announced in June 2015 that the Department would develop new regulations to establish a more accessible and consistent borrower defense standard and clarify and streamline the borrower defense process to protect borrowers and improve the Department's ability to hold schools accountable for actions and omissions that result in loan discharges.

Consistent with the Secretary's commitment, we propose regulations that would specify the conditions and processes under which a borrower may assert a defense to repayment of a Direct Loan, also referred to as a "borrower defense," based on a new Federal standard. The current standard allows borrowers to assert a borrower defense if a cause of action would have arisen under applicable state law. In contrast, the new Federal standard would allow a borrower to assert a borrower defense on the basis of a substantial misrepresentation, a breach of contract, or a favorable, nondefault contested judgment against the school for its act or omission relating to the making of the borrower's Direct Loan or the provision of educational services for which the loan was provided. The new standard would apply to loans made after the effective date of the proposed regulations. The proposed regulations would establish a process for borrowers to assert a borrower defense that would be implemented both for claims that fall under the existing standard and for later claims that fall under the new, proposed standard. In addition, the proposed regulations would establish the conditions or events upon which an institution is or may be required to provide to the Department financial protection, such as a letter of credit, to help protect students, the Federal government, and taxpayers against potential institutional liabilities.

The Department also proposes a regulation that would prohibit a school participating in the Direct Loan Program from requiring, through the use of contractual provisions or other agreements, arbitration to resolve claims brought by a borrower against the school that could also form the basis of a borrower defense under the Department's regulations. The proposed regulations also would prohibit a school participating in the Direct Loan Program from obtaining agreement, either in an arbitration agreement or in another form, that a borrower waive his or her right to initiate or participate in a class action lawsuit regarding such claims and from requiring students to engage in internal institutional complaint or grievance procedures before contacting accrediting or government agencies with authority over the school regarding such claims. The proposed regulations also would prohibit a school participating in the Direct Loan Program from requiring, through the use of contractual provisions or other agreements, arbitration to resolve claims brought by a borrower against the school that could also form the basis of a borrower defense under the Department's regulations. The proposed regulations would also impose certain notification and disclosure requirements on a school regarding claims that are voluntarily submitted to arbitration after a dispute has arisen.

Summary of the Major Provisions of This Regulatory Action: For the Direct Loan Program, we propose new regulations governing borrower defenses that would—

- Clarify that borrowers with loans first disbursed prior to July 1, 2017, may assert a defense to repayment under the current borrower defense State law standard;
- Establish a new Federal standard for borrower defenses, and limitation periods applicable to the claims asserted under that standard, for borrowers with loans first disbursed on or after July 1, 2017;
- Establish a process for the assertion and resolution of borrower defense claims made by individuals;
- Establish a process for group borrower defense claims with respect to both open and closed schools, including the conditions under which the Secretary may allow a claim to proceed without receiving an application;
- Provide for remedial actions the Secretary may take to collect losses arising out of successful borrower defense claims for which an institution is liable; and
- Add provisions to schools' Direct Loan program participation agreements that, for claims that may form the basis for borrower defenses—
  - Prevent schools from requiring that students first engage in a school's internal complaint process before contacting accrediting and government agencies about the complaint;
  - Prohibit the use of mandatory pre-dispute arbitration agreements by schools;
  - Prohibit the use of class action lawsuit waivers; and
  - To the extent schools and borrowers engage in arbitration in a manner consistent with applicable law and regulation, require schools to disclose to and notify the Secretary of arbitration filings and awards.

The proposed regulations would also revise the Student Assistance General Provisions regulations to—

- Amend the definition of a misrepresentation to include omissions of information and statements with a likelihood or tendency to mislead under the circumstances. The definition would be amended for misrepresentations for which the Secretary may impose a fine, or limit, suspend, or terminate an institution's participation in title IV, HEA programs. This definition is also adopted as a basis for alleging borrower defense claims for Direct Loans first disbursed after July 1, 2017;
- Clarify that a limitation may include a change in an institution's participation status in title IV, HEA programs from fully certified to provisionally certified;
- Amend the financial responsibility standards to include actions and events that would trigger a requirement that a school provide financial protection, such as a letter of credit, to insure against future borrower defense claims and other liabilities to the Department;
- Require proprietary schools with a student loan repayment rate that is less than or equal to zero percent to provide a Department-issued plain language warning to prospective and enrolled students and place the warning on its Web site and in all promotional materials and advertisements; and
- Require a school to disclose on its Web site and to prospective and enrolled students if it is required to provide financial protection, such as a letter of credit, to the Department.

The proposed regulations would also—

- Expand the types of documentation that may be used for the granting of a discharge based on the death of the borrower ("death discharge") in the Perkins, FFEL, Direct Loan, and TEACH Grant programs;
- Revise the Perkins, FFEL, and Direct Loan closed school discharge regulations to ensure borrowers are aware of and able to benefit from their ability to receive the discharge;
- Expand the conditions under which a FFEL or Direct Loan borrower may qualify for a false certification discharge;
- Codify the Department's current policy regarding the impact that a discharge of a Direct Subsidized Loan has on the 150 Percent Direct Subsidized Loan Limit; and
- Make technical corrections to other provisions in the FFEL and Direct Loan Program regulations and to the regulations governing the Secretary's debt compromise authority.

Please refer to the *Summary of Proposed Changes* section of this notice of proposed rulemaking (NPRM) for more details on the major provisions contained in this NPRM.

Costs and Benefits: As further detailed in the *Regulatory Impact Analysis,* the benefits of the proposed regulations include: (1) An updated and clarified process and the creation of a Federal standard to streamline the administration of the borrower defense rule and to increase protections for students as well as taxpayers and the Federal government; (2) increased financial protections for the Federal government and thus for taxpayers; (3) additional information to help students, prospective students, and their families make educated decisions based on information about an institution's financial soundness and its borrowers' loan repayment outcomes; (4) improved conduct of schools by holding individual institutions accountable and thereby deterring misconduct by other schools; (5) improved awareness and usage, where appropriate, of closed school and false certification discharges; and (6) technical changes to improve the administration of the title IV, HEA programs. Costs include paperwork burden associated with the required reporting and disclosures to ensure compliance with the proposed regulations, the cost to affected institutions of providing financial protection, and the cost to taxpayers of borrower defense claims that are not reimbursed by institutions.

Invitation to Comment: We invite you to submit comments regarding these proposed regulations.

To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses, and provide relevant information and data whenever possible, even when there is no specific solicitation of data and other supporting materials in the request for comment. We also urge you to arrange your comments in the same order as the proposed regulations. Please do not submit comments that are outside the scope of the specific proposals in this NPRM, as we are not required to respond to such comments.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about the proposed regulations by accessing *Regulations.gov*. You may also inspect the comments in person at 400 Maryland Ave. SW., Washington, DC, between 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. To schedule a time to inspect comments, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The Secretary proposes to amend §§ 30.70, 668.14, 668.41, 668.71, 668.90, 668.93, 668.171, 668.175, 674.33, 674.61, 682.202, 682.211, 682.402, 682.405, 682.410, 685.200, 685.205, 685.206, 685.209, 685.212, 685.214, 685.215, 685.200, 685.220, 685.300, 685.308, and 686.42 of title 34 of the Code of Federal Regulations (CFR), and also to add new §§ 668.176, 685.222, 685.223, and 685.310 to that title. The regulations in 34 CFR part 30 pertain to Debt Collection. The regulations in 34 CFR part 668 pertain to Student Assistance General Provisions. The regulations in 34 CFR part 674 pertain to the Perkins Loan Program. The regulations in 34 CFR part 682 pertain to the FFEL Program. The regulations in 34 CFR part 685 pertain to the Direct Loan Program. The regulations in 34 CFR part 686 pertain to the TEACH Grant Program. We are proposing these amendments to: (1) Specify that the standards used to identify an act or omission of a school that provides the basis for a borrower defense will depend on when the Direct Loan was first disbursed; (2) establish a new Federal standard and limitation periods that the Department will use to identify an act or omission of an institution that constitutes a borrower defense; (3) establish the procedures to be used for a borrower to initiate a borrower defense; (4) establish the standards and certain procedures that the Department would use to determine the liability of an institution for the amount of relief arising from a borrower defense; (5) prohibit schools' use of mandatory pre-dispute arbitration agreements or class action bans to resolve disputes for claims that could also form the basis of borrower defense claims or require borrowers to waive any rights to initiate or participate in class actions regarding such claims; and impose certain notification and disclosure requirements relating to a school's use of arbitration; (6) establish the conditions or events upon which an institution is or may be required to provide to the Department financial protection, such as a letter of credit, to help protect the Federal government, and thus taxpayers, against potential institutional liabilities; (7) require a proprietary institution with a student loan repayment rate that is less than or equal to zero percent to place a Department-issued plain language warning on its Web site and in advertising and promotional materials, as well as to provide the warning to prospective and enrolled students; (8) require that a school disclose to prospective and enrolled students if it is required to provide financial protection to the Department; (9) expand the allowable documentation that may be submitted to demonstrate eligibility for a death discharge of a title IV, HEA loan or a TEACH Grant service obligation; (10) revise the closed school discharge regulations to ensure borrowers are aware of and able to benefit from their ability to receive the discharge; (11) expand the eligibility criteria for the false certification loan discharge; (12) make technical corrections to the regulation that describes the authority of the Department to compromise, or suspend or terminate collection of, debts; (13) make technical corrections to the regulations governing the Pay as You Earn (PAYE) and Revised Pay as You Earn (REPAYE) repayment plans; (14) allow for the consolidation of Nurse Faculty Loans; (15) allow borrowers to obtain a Direct Consolidation Loan if the borrower consolidates at least one of the eligible loans listed in § 685.220(b); (16) clarify the conditions under which the capitalization of interest by FFEL Program loan holders is permitted; and (17) codify the conditions under which the discharge of a Direct Subsidized Loan will lead to the elimination or recalculation of a Subsidized Usage Period under the 150 Percent Direct Subsidized Loan Limit or the restoration of interest subsidy.

Public Participation

On August 20, 2015, we published a notice in the **Federal Register** (80 FR 50588) announcing our intent to establish a negotiated rulemaking committee under section 492 of the HEA to develop proposed regulations for determining which acts or omissions of an institution of higher education ("institution" or "school") a borrower may assert as a borrower defense under the Direct Loan Program and the consequences of such borrower defenses for borrowers, institutions, and the Secretary. We also announced two public hearings at which interested parties could comment on the topic suggested by the Department and suggest additional topics for consideration for action by the negotiated rulemaking committee. The hearings were held on—

September 10, 2015, in Washington, DC; and

September 16, 2015, in San Francisco, CA.

Transcripts from the public hearings are available at *www2.ed.gov/policy/highered/reg/hearulemaking/2016/index.html.*

We also invited parties unable to attend a public hearing to submit written comments on the proposed topics and to submit other topics for consideration. Written comments submitted in response to the August 20, 2015, **Federal Register** notice may be viewed through the Federal eRulemaking Portal at *www.regulations.gov*, within docket ID ED–2015–OPE–0103. Instructions for finding comments are also available on the site under "How to Use Regulations.gov" in the Help section.

On October 20, 2015, we published a notice in the **Federal Register** (80 FR 63478) requesting nominations for negotiators to serve on the negotiated rulemaking committee and setting a schedule for committee meetings.

On December 21, 2015, we published a notice in the **Federal Register** (80 FR 79276) requesting additional nominations for negotiators to serve on the negotiated rulemaking committee.

Negotiated Rulemaking

Section 492 of the HEA, 20 U.S.C. 1098a, requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining extensive input and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, the Secretary in most cases must subject the proposed regulations to a negotiated rulemaking process. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without alteration a defined group of regulations on which the negotiators reached consensus unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at: *www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.*

On October 20, 2015, the Department published a notice in the **Federal Register** (80 FR 63478) announcing its intention to establish a negotiated rulemaking committee to prepare proposed regulations governing the Federal Student Aid programs authorized under title IV of the HEA. The notice set forth a schedule for the committee meetings and requested nominations for individual negotiators to serve on the negotiating committee.

The Department sought negotiators to represent the following groups: Students/borrowers; legal assistance organizations that represent students/borrowers; consumer advocacy organizations; groups representing U.S. military servicemembers or veteran Federal loan borrowers; financial aid administrators at postsecondary institutions; State attorneys general (AGs) and other appropriate State officials; State higher education executive officers; institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F, and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA; two-year public institutions of higher education; four-year public institutions of higher education; private, nonprofit institutions of higher education; private, for-profit institutions of higher education; FFEL Program lenders and loan servicers; and FFEL Program guaranty agencies and guaranty agency servicers (including collection agencies). The Department considered the nominations submitted by the public and chose negotiators who would represent the various constituencies.

On December 21, 2015, the Department published a notice in the **Federal Register** (80 FR 79276) requesting additional nominations for negotiators to serve on the negotiated rulemaking committee to represent constituencies that were not represented following the initial request for nominations. The Department sought negotiators to represent the following groups: State higher education executive officers; institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F, and title V of the HEA; two-year public institutions of higher education; private, for-profit institutions of higher education; and national, regional, or specialized accrediting agencies.

The negotiating committee included the following members:

Ann Bowers, for-profit college borrower, and Chris Lindstrom (alternate), U.S. Public Interest Research Group, representing students/borrowers.

Noah Zinner, Housing and Economic Rights Advocates, and Eileen Connor (alternate), Project on Predatory Student Lending at Harvard Law School (at the time of nomination, New York Legal Assistance Group) representing legal assistance organizations that represent students.

Maggie Thompson, Higher Ed, Not Debt, and Margaret Reiter (alternate), attorney, representing consumer advocacy organizations.

Bernard Eskandari, Office of the Attorney General of California, and Mike Firestone (alternate), Commonwealth of Massachusetts Office of the Attorney General, representing State attorneys general and other appropriate State officials.

Walter Ochinko, Veterans Education Success, Will Hubbard (first alternate), Student Veterans of America, and Derek Fronabarger (second alternate), Student Veterans of America, representing U.S. military servicemembers or veterans.

Karen Solinski, Higher Learning Commission, and Dr. Michale McComis (alternate), Accrediting Commission of Career Schools and Colleges, representing accreditors.

Becky Thompson, Washington Student Achievement Council, representing State higher education executive officers.

Alyssa Dobson, Slippery Rock University, and Mark Justice (alternate), The George Washington University, representing financial aid administrators.

Sharon Oliver, North Carolina Central University, and Emily London Jones (alternate), Xavier University of Louisiana, representing minority-serving institutions.

Angela Johnson, Cuyahoga Community College, and Shannon Sheaff (alternate), Mohave Community College, representing two-year public institutions.

Kay Lewis, University of Washington, and Jean McDonald Rash (alternate), Rutgers University, representing four-year public institutions.

Christine McGuire, Boston University, and David Sheridan (alternate), Columbia University, representing private, nonprofit institutions.

Dennis Cariello, Hogan Marren Babbo & Rose, Ltd., and Chris DeLuca (alternate), DeLuca Law, representing private, for-profit institutions.

Wanda Hall, EdFinancial Services, and Darin Katzberg (alternate), Nelnet, representing FFEL Program lenders and loan servicers.

Betsy Mayotte, American Student Assistance, and Jaye O'Connell (alternate), Vermont Student Assistance Corporation, representing FFEL Program guaranty agencies and guaranty agency servicers.

Gail McLarnon, U.S. Department of Education, representing the Department.

The negotiated rulemaking committee met to develop proposed regulations on January 12–14, 2016, February 17–19, 2016, and March 16–18, 2016. The Department held informational sessions by telephone for interested members of the committee on March 1 and March 3, 2016, to review the Department's loan repayment rate disclosure proposal, and on March 9 and March 10, 2016, at the request of a non-Federal negotiator, to hear from Professor Adam Zimmerman of Loyola Law School regarding agency class settlement processes.

At its first meeting, the negotiating committee reached agreement on its protocols and proposed agenda. The protocols provided, among other things, that the committee would operate by consensus. Consensus means that there must be no dissent by any member in order for the committee to have reached agreement. Under the protocols, if the committee reached a final consensus on all issues, the Department would use the consensus-based language in its proposed regulations. Furthermore, the Department would not alter the consensus-based language of its proposed regulations unless the Department reopened the negotiated rulemaking process or provided a written explanation to the committee members regarding why it decided to depart from that language.

During the first meeting, the negotiating committee agreed to negotiate an agenda of seven issues related to student financial aid. These seven issues were: Borrower defenses, false certification discharges, institutional accountability, electronic death certificates, consolidation of Nurse Faculty Loans, interest capitalization, and technical corrections to the PAYE and REPAYE plans. During the second meeting, the negotiating committee agreed to add two additional issues: Closed school discharges and a technical correction to the regulations that describe the authority of the Department to compromise, or suspend, or terminate collection of, debts. Under the protocols, a final consensus would have to include consensus on all nine issues.

During committee meetings, the negotiators reviewed and discussed the Department's drafts of regulatory language and the committee members' alternative language and suggestions. At the final meeting on March 18, 2016, the committee did not reach consensus on the Department's proposed regulations. For that reason, and according to the committee's protocols, all parties who participated or were represented in the negotiated rulemaking, in addition to all members of the public, may comment freely on the proposed regulations. For more information on the negotiated rulemaking sessions, please visit: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2016/index.html.*

Summary of Proposed Changes

The proposed regulations would—

- Amend § 685.206 to clarify that existing regulations with regard to borrower defenses apply to loans first disbursed prior to July 1, 2017, and that a borrower defense asserted pursuant to this section will be subject to the procedures in proposed § 685.222(e) to (k);
- Amend § 685.206 to remove the period of limitation on the Secretary's ability to recover from institutions the amount of the losses incurred by the Secretary on loans to which an approved borrower defense applies;
- Amend § 685.206 to clarify that a borrower defense may be asserted as to an act or omission of the school that relates to the making of the loan or the provision of educational services that would give rise to a cause of action against the school under applicable State law;
- Add a new borrower defense section at § 685.222 that applies to loans first disbursed on or after July 1, 2017;
- Provide in § 685.222(a) that a borrower defense may be established if a preponderance of the evidence shows that the borrower has a borrower defense claim that relates to the making of the borrower's Direct Loan or the provision of educational services and meets the requirements in § 685.222(b), (c), or (d);
- Provide in § 685.222(a) that a violation by a school of an eligibility or compliance requirement in the HEA or its implementing regulations is not a basis for a borrower defense;
- Define in § 685.222(a) the terms "borrower" and "borrower defense";
- Amend the definition of "misrepresentation" in § 668.71 to define a misleading statement as one that "includes any statement that has the likelihood or tendency to mislead under the circumstances" and to include "any statement that omits information in such a way as to make the statement false, erroneous, or misleading";
- Establish in § 685.222(b), (c), and (d) a new Federal standard upon which a borrower defense may be based—a judgment against the school, a breach of contract by the school, or a substantial misrepresentation by the school;
- Provide in § 685.222(d)(2) that in determining whether a school made a substantial misrepresentation, the Secretary may consider certain factors as to whether the reliance of a borrower on the misrepresentation was reasonable;
- Establish in § 685.222(e) a procedure under which an individual borrower may assert a borrower defense;
- Provide in § 685.222(f) a general description of a group borrower defense claim process, including the conditions under which the Secretary may allow a claim to proceed without receiving an application;
- Establish in § 685.222(g) and (h) processes for borrower defense claims made by groups of borrowers with respect to closed schools and open schools, respectively;
- Specify in § 685.222(i) that the relief granted to a borrower with an approved borrower defense is based on the facts underlying the borrower's claim;
- Require in § 685.222(j) and (k) cooperation by the borrower in any borrower defense proceeding and, upon the granting of relief to a borrower, provide for the transfer to the Secretary of the borrower's right to recovery against third parties;
- Add a new paragraph (k) to § 685.212 to include an approved borrower defense among the reasons for a discharge of a loan obligation, and to address borrower defense claims on Direct Consolidation Loans;
- Amend § 685.205 to expand the circumstances under which the Secretary grants forbearance without requiring documentation from the borrower to include periods of time when a borrower defense has been asserted and is under review;
- Amend § 685.300 to prevent schools from requiring that students first engage in a school's internal complaint process before contacting accrediting and government agencies about the

complaint; prohibit the use of pre-dispute mandatory arbitration agreements by schools; prohibit the use of class action lawsuit waivers; and require schools to disclose to and notify the Secretary of arbitration filings;

- Clarify in § 685.308 that the Secretary may recover from the school losses from loan discharges, including losses incurred from approved borrower defenses;
- Amend § 668.171 to include conditions and events that trigger a requirement that the school provide financial protection, such as a letter of credit. Such conditions and events include incurring significant amounts of liability in recent years for borrower defense claim losses, a school's inability to pay claims, and events that would compromise a school's ability to continue its participation in the title IV, HEA programs;
- Require in § 668.41 a proprietary school with a student loan repayment rate that is less than or equal to zero percent to place a Department-issued plain language warning on its Web site and in advertising and promotional materials, as well as to provide the warning to prospective and enrolled students;
- Require in § 668.41 that a school disclose to prospective and enrolled students if it is required to provide financial protection, such as a letter of credit, to the Department;
- Amend § 668.175 to state the amounts of financial protection, such as letters of credit, required in the event of particular occurrences;
- Clarify in § 668.90 when a hearing official must uphold the limitation or termination requested by the Secretary for disputes related to the amount of financial protection, such as a letter of credit, for a school's failure under the financial responsibility standards;
- Clarify in § 668.93 that a limitation sought by the Secretary on a school's participation in title IV, HEA programs may include a change in participation from fully certified to provisionally certified;
- Amend §§ 674.61, 682.402, 685.212, and 686.42 to allow for a death discharge of a loan or TEACH Grant service obligation to be granted based on an original or certified copy of a death certificate that is submitted electronically or sent by facsimile transmission, or through verification of death in an electronic Federal or State database that is approved for use by the Secretary;
- Amend §§ 668.14(b), 674.33(g), 682.402(d), and 685.214(f) to increase outreach by the Secretary and schools and make more information available to borrowers eligible for a closed school discharge so that they are aware of this option;
- Amend § 685.215 to update and expand the existing categories of false certification discharge to include the improper certification of eligibility of a student who is not a high school graduate and false certification of a borrower's academic progress;
- Amend § 682.211 to require lenders to grant a mandatory administrative forbearance for borrowers who have filed a borrower defense claim with the Secretary with the intent of seeking relief under § 685.212(k) after consolidating into the Direct Loan Program;
- Update the provisions in § 30.70 to reflect the increased debt resolution authority provided in Public Law 101–552 that authorizes the Department to resolve debts up to $100,000 without approval from the Department of Justice (DOJ) as well as other changes to the Department's claim resolution authority;
- Amend § 685.209 by making technical corrections and clarifying changes to the PAYE and REPAYE repayment plan regulations;
- Amend § 685.220 to allow a borrower to obtain Direct Consolidation Loan, if the borrower consolidates any of the eligible loans listed in § 685.220(b); and
- Clarify in §§ 682.202, 682.405, and 682.410 that guaranty agencies and FFEL Program lenders are not permitted to capitalize outstanding interest on FFEL loans when the borrower rehabilitates a defaulted FFEL loan; and
- Amend § 685.200 to codify the Department's current practice regarding the elimination or recalculation of a subsidized usage period or the restoration of interest subsidy under the 150 Percent Direct Subsidized Loan Limit when a Direct Subsidized Loan is discharged.

Significant Proposed Regulations

We group major issues according to subject, with the applicable sections of the proposed regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Borrower Defenses (§§ 668.71, 685.205, 685.206, and 685.222)

Background: The proposed regulations address several topics related to the administration of title IV, HEA student aid programs and benefits and options for borrowers. The Department first implemented borrower defense regulations for the Direct Loan Program in the 1995–1996 academic year to protect borrowers. The Department's original intent was for this rule to be in place for the 1995–1996 academic year, and then to develop a more extensive rule for both the Direct Loan and FFEL Loan programs through negotiated rulemaking in the following year.

However, based on the recommendation of non-Federal negotiators in the spring of 1995, the Secretary decided not to develop further regulations for the Direct Loan and FFEL programs. 60 FR 37768. As a result, the regulations have not been updated in two decades to establish appropriate processes or other necessary information to allow borrowers to effectively utilize their options under the borrower defense regulation.

In May 2015, Corinthian, a publicly traded company operating numerous postsecondary schools that enrolled over 70,000 students at more than 100 campuses nationwide, filed for bankruptcy. Corinthian collapsed under deteriorating financial conditions and while subject to multiple State and Federal investigations, one of which resulted in a finding by the Department that the college had misrepresented its job placement rates. Upon the closure of Corinthian, which included Everest Institute, Wyotech, and Heald College, the Department received thousands of claims for student loan relief from Corinthian students.

The Department is committed to ensuring that students harmed by Corinthian's fraudulent practices receive the relief to which they are entitled under the current closed school and borrower defense regulations. The Department appointed a Special Master in June 2015 to create and oversee a process to provide debt relief for these Corinthian borrowers who applied for Federal student loan discharges based on claims against Corinthian.

The current borrower defense regulation, which has existed since 1995 but has rarely been used, requires a borrower to demonstrate that a school's acts or omissions would give rise to a cause of action under "applicable State law." The regulation is silent on the process a borrower follows to assert a borrower defense claim.

The landscape of higher education has changed significantly over the past 20 years. The role of distance education in the higher education sector has grown substantially. In the 1999–2000 academic year, about eight percent of students were enrolled in at least one distance education course; by the 2007–2008 academic year, that number had grown to 20 percent.[1] Recent IPEDS data indicate that in the fall of 2013, 26.4 percent of students at degree-granting, title IV-participating institutions were enrolled in at least one distance education class.[2] Much of this growth occurred within and coincided with the growth of the proprietary higher education sector. In the fall of 1995, degree-granting, for-profit institutions enrolled approximately 240,000 students. In the fall of 2014, degree-granting, for-profit schools enrolled over 1.5 million students.[3] These changes to the higher education industry have allowed students to enroll in colleges based in other States and jurisdictions with relative ease.

These changes have had an impact on the Department's ability to apply its borrower defense regulations. The current borrower defense regulations do not identify which State's law is considered "applicable" State law on which the borrower's claim can be based.[4] Generally, the regulation was assumed to refer to the laws of the State in which the institution was located; we had little occasion to address differences in protection for borrowers in States that offer little protection from school misconduct or borrowers who reside in one State but are enrolled via distance education in a program based in another State. Some States have extended their rules to protect these students, while others have not. As a result of the difficulties in application and interpretation of the current State law standard, as well as the lack of clarity surrounding the procedures that apply for borrower defense, the Department took additional steps to improve the borrower defense claim process.

In a **Federal Register** notice published on October 20, 2015 (80 FR 63478), the Department announced its intent to establish a negotiated rulemaking committee to develop proposed regulations that establish, among other items, the criteria that the Department will use to identify acts or omissions of an institution that constitute, for borrowers of Federal Direct Loans, a borrower defense, including a Federal standard, the procedures to be used for a borrower to establish a borrower defense, and the standards and procedures that the Department will use to determine the liability of the institution for losses arising from approved borrower defenses.

We propose to create a new § 685.222, and amend §§ 668.71, 685.205, and 685.206, to establish, effective July 1, 2017, a new Federal standard for borrower defenses, new limitation periods for asserting borrower defenses, and processes for the assertion and resolution of borrower defense claims. In the following sections, we describe in more detail these proposed changes and other clarifying changes proposed to improve the borrower defense process.

Borrower Defenses—General (§ 685.222(a))

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan.

Section 487 of the HEA provides that the Secretary can take enforcement action against an institution participating in the title IV, HEA programs that substantially misrepresents the nature of the institution's education program, its financial charges, or the employability of its graduates.

Current Regulations: Section 685.206(c) establishes the conditions under which a Direct Loan borrower may assert a borrower defense, the relief afforded by the Secretary in the event the borrower's claim is successful, and the Secretary's authority to recover from the school any loss that results from a successful borrower defense. Specifically, § 685.206(c) provides that a borrower defense may be asserted based upon any act or omission of the school that would give rise to a cause of action against the school under applicable State law. The current regulations in § 685.206(c) are described in more detail under "Borrower Responsibilities and Defenses (34 CFR 685.206)."

Proposed Regulations: Proposed § 685.222(a) would provide that borrower defense claims asserted by a borrower for Direct Loans first disbursed before July 1, 2017, are considered by the Secretary in accordance with the provisions of § 685.206(c), while borrower defense claims asserted by a borrower for Direct Loans first disbursed on or after July 1, 2017, will be considered by the Secretary in accordance with the provisions of § 685.222.

For borrower defense claims asserted by a borrower for Direct Loans first disbursed on or after July 1, 2017, proposed § 685.222 would establish a new Federal standard and new limitation periods. Proposed § 685.222 would also establish a process for the assertion and resolution of all borrower defense claims—both those made under § 685.206(c) for Direct Loans first disbursed prior to July 1, 2017, and for those made under proposed § 685.222. We describe the proposed regulations relating to the new Federal standard and new limitation periods under "Federal Standard and Limitation Periods (34 CFR 685.222(b), (c), and (d) and 34 CFR 668.71)," and the borrower defense claim process under "Process for Individual Borrowers (34 CFR 685.222(e))," "Group Process for Borrower Defenses—General (34 CFR 685.222(f))," "Group Process for Borrower Defenses—Closed School (34 CFR 685.222(g))," and "Group Process for Borrower Defense Claims—Open School (34 CFR 685.222(h))."

For borrower defense claims asserted by a borrower for Direct Loans first disbursed on or after July 1, 2017, proposed § 685.222(a)(2) would provide that a preponderance of the evidence must show that the borrower has a borrower defense that relates to the making of the borrower's Direct Loan or the provision of educational services by the school to the student and that meets the requirements under § 685.222(b), (c), or (d), which are described in detail under "Federal Standard and Limitation Periods (34 CFR 685.222(b), (c), and (d) and 34 CFR 668.71)."

Section 685.222(a)(3) would clarify that a violation by the school of an eligibility or compliance requirement in the HEA or its implementing regulations is not a basis for a borrower defense unless that conduct would by itself, and without regard to the fact that the conduct violated an HEA requirement, give rise to a cause of action against the school under either applicable State law or under the new Federal standard, whichever is applicable depending on the first disbursement date of the Direct Loan in question.

Proposed § 685.222(a)(4) would define "borrower" and "borrower defense." Under the proposed definitions, "borrower" would mean the borrower and, in the case of a Direct PLUS Loan, the student and any endorsers. Under proposed § 685.222(a)(5), "borrower defense" would include one or both of the following: a defense to repayment of amounts owed to the Secretary on a Direct Loan, in whole or in part; and a right to recover amounts previously collected by the Secretary on the Direct Loan, in whole or in part.

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[1] Learning at a Distance: Undergraduate Enrollment in Distance Education Courses and Degree Programs (*http://nces.ed.gov/pubs2012/2012154.pdf*).

[2] 2014 Digest of Education Statistics: Table 311.15: Number and percentage of students enrolled in degree-granting postsecondary institutions, by distance education participation, location of student, level of enrollment, and control and level of institution: Fall 2012 and fall 2013.

[3] 2015 Digest of Education Statistics: Table 303.10: Total fall enrollment in degree-granting postsecondary institutions, by attendance status, sex of student, and control of institution: Selected years, 1947 through 2025—*http://nces.ed.gov/programs/digest/d14/tables/dt14_303.10.asp?current=yes*.

[4] In the few instances in which claims have been recognized under current regulations, borrowers and the school were typically located in the same State.

If the borrower asserts both a borrower defense under § 685.222 and any other objection to an action of the Secretary with regard to the Direct Loan at issue (such as a claim for a closed school discharge or false certification discharge), the Secretary would notify the borrower of the order in which the Secretary considers the borrower defense and any other objections. The order in which the Secretary will consider objections, including borrower defense, would be determined by the Secretary as appropriate under the circumstances.

Reasons: We propose to establish in § 685.222 a new Federal standard and new limitation periods for borrower defense claims asserted with respect to loans first disbursed after the expected effective date of these proposed regulations—July 1, 2017—as well as a process for the assertion and resolution of all borrower defense claims, both those made under proposed § 685.206(c) and those made under proposed § 685.222. The Department believes that the proposed changes could reduce the number of borrowers who are struggling to meet their student loan obligations. During the public comment periods of the negotiated rulemaking sessions, many public commenters who were borrowers mentioned that they believed that they had been defrauded by their institutions of higher education and were unable to pay their student loans or obtain debt relief under the current regulations. For instance, many of these borrowers stated that they had relied upon the misrepresentation by their school as to employment outcomes, but later found out that they were unable to secure employment as had been represented to them before their enrollment.

We discuss more specifically our reasons for adopting a new Federal standard and limitation periods under the discussion of "Federal Standard and Limitation Periods (34 CFR 685.222(b), (c), and (d) and 34 CFR 668.71)." We discuss our reasons for establishing a borrower defense claim process under "Process for Individual Borrowers (34 CFR 685.222(e)," "Group Process for Borrower Defenses—General (34 CFR 685.222(f)," "Group Process for Borrower Defenses—Closed School (34 CFR 685.222(g)," and "Group Process for Borrower Defense Claims—Open School (23 CFR 685.222(h)." We explain why the borrower defense regulations apply only to the Direct Loan Program under "Discharge of a Loan Obligation (§ 685.212)."

Proposed § 685.222(a) would establish provisions of general applicability for borrower defense claims. As noted above, we would clarify in paragraphs (a) and (b) of that section that borrower defense claims for loans disbursed before July 1, 2017, are made under § 685.206(c) and that borrower defense claims for loans disbursed on or after July 1, 2017, are made under proposed § 685.222. Although proposed § 685.206(c) also would specify that it applies to borrower defense claims for loans disbursed before July 1, 2017, we believe that also stating the general framework in § 685.222 would help eliminate any confusion as to which standard applies.

In proposed § 685.222(a)(2) and (5), we would establish the basic elements of borrower defense claims for loans disbursed on or after July 1, 2017. Specifically, proposed § 685.222(a)(2) and (5) would require that a borrower defense claim:

- Is supported by a preponderance of the evidence;
- Relates to the making of the borrower's Direct Loan or the provision of educational services; and
- Meets the requirements under paragraph (b), (c), or (d) of the section.

In addition, proposed § 685.222(a)(2) would clarify that a claim may be brought by a borrower to discharge amounts owed to the Secretary on a Direct Loan, in whole or in part, or to recover amounts previously collected by the Secretary on the Direct Loan, in whole or in part, or both.

A claim is supported by a "preponderance of the evidence" if there is sufficient evidence produced to persuade the decision maker that it is more likely than not that something happened or did not happen as claimed. In practice, the decision maker in a borrower defense proceeding would measure the value, or weight, of the evidence (including attestations, testimony, documents, and physical evidence) produced to prove that the borrower defense claim as alleged is true. We believe this evidentiary standard is appropriate as it is the typical standard in most civil proceedings. Additionally, the Department uses a preponderance of the evidence standard in other processes regarding borrower debt issues. See 34 CFR 34.14(b), (c) (administrative wage garnishment); 34 CFR 31.7(e) (Federal salary offset). We believe that this evidentiary standard strikes a balance between ensuring that borrowers who have been harmed are not subject to an overly burdensome evidentiary standard and protecting the Federal government, taxpayers, and institutions from unsubstantiated claims. We discuss the types of evidence that may be presented in support of a claim under "Process for Individual Borrowers (34 CFR 685.222(e))."

Proposed § 685.222 would clarify that, whether a borrower defense is brought under the standard described in § 685.206(c) or the standards in proposed § 685.222(b), (c), and (d), the Department's position is that it will acknowledge a borrower defense asserted under the regulations "only if the cause of action directly relates to the loan or to the school's provision of educational services for which the loan was provided." 60 FR 37768, 37769. Such claims may include, for example, fraud in the making of the Direct Loan in the course of student recruitment or a failure to provide educational services. In some circumstances, this may include post-enrollment services like career advising or placement services. The Department does not recognize as a defense against repayment of the loan a cause of action that is not directly related to the loan or to the provision of educational services, such as personal injury tort claims or actions based on allegations of sexual or racial harassment. *Id.* The proposed language is consistent with this longstanding position and is also reflected in similar proposed language for § 685.206(c). Non-Federal negotiators also requested clarification on whether borrower defenses may be asserted as to tort claims asserting that educational institutions and their employees breached their duty to educate students adequately (otherwise known as "educational malpractice"), or to issues relating to academic and disciplinary disputes. Courts that have considered claims characterized as educational malpractice have generally concluded that State law does not recognize such claims.[5] The Department does not intend in these regulations to create a different legal standard, and for existing loans would apply that same principle under § 685.206(c), and would maintain that same position in applying the standards proposed in § 685.222. Claims relating to the quality of a student's education or matters regarding academic and disciplinary disputes within the judgment and discretion of a school are outside the scope of the borrower defense regulations. The Department recognizes, however, that in certain circumstances, such as where a school may make specific misrepresentations about its facilities, financial charges, programs, or employability of its graduates, such misrepresentations may function as the basis of a borrower defense as opposed to being a claim regarding educational quality.[6] Additionally, a breach of contract borrower defense may be raised where a school has failed to deliver specific obligations, such as programs and services, it has committed to by contract. The Department also notes that the limitations of the scope of the borrower defense regulations should not be taken to represent any view that other issues are not properly the concern of the Department as well as other Federal agencies, State authorizers and other State agencies, accreditors, and the courts.

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[5] See *Bell* v. *Board of Educ. of City of West Haven,* 55 Conn. App. 400, 739 A.2d 321, 139 Ed. Law Rep. 538 (1999), noting that the vast majority of courts have refused to recognize a cause of action for educational malpractice; *Sain* v. *Cedar Rapids Cmty. Sch. Dist.,* 626 NW.2d 115, 121 (Iowa 2001) (Educational malpractice almost universally rejected as a cause of action).

With regard to the other required elements of a borrower defense claim, we discuss our reason for requiring a borrower defense to meet the requirements under paragraphs (b), (c), and (d) of proposed § 685.222 under "Federal Standard and Limitation Periods (34 CFR 685.222(b), (c), and (d) and 34 CFR 668.71)."

Proposed § 685.222(a)(3) would set forth the Department's longstanding position that an act or omission by the school that violates an eligibility or compliance requirement in the HEA or its implementing regulations does not necessarily affect the enforceability of a Federal student loan obtained to attend the school, and is not, therefore, automatically a basis for a borrower defense.[7] The HEA vests the Department with the sole authority to determine and apply the appropriate sanction for HEA violations. A school's act or omission that violates the HEA may, of course, give rise to a cause of action under other law, and that cause of action may also independently constitute a borrower defense claim under § 685.206(c) or proposed § 685.222. For example, advertising that makes untruthful statements about placement rates violates section 487(a)(8) of the HEA, but may also give rise to a cause of action under common law based on misrepresentation[8] or constitute a substantial misrepresentation under the new Federal standard and, therefore, constitute a basis for a borrower defense claim.

In proposed § 685.222(a)(4), we propose to define "borrower" to provide clarity and to include all parties who may be responsible for repaying the Secretary for a Direct Loan to which a borrower defense claim relates or who are otherwise harmed.

In proposed § 685.222(a)(5), "borrower defense" is defined to include one or both of the following: A defense to repayment of amounts owed to the Secretary on a Direct Loan, in whole or in part; and a right to recover amounts previously collected by the Secretary on the Direct Loan, in whole or in part. Currently, the existing regulation for borrower defense at § 685.206(c) allows for reimbursement of amounts paid towards a loan as possible further relief, in addition to a discharge of any remaining loan obligation, for approved borrower defenses. The Department believes that the proposed definition will more accurately capture borrowers' requests for and the Secretary's ability to offer relief through the borrower defense process—for both a discharge of any remaining loan obligation and for reimbursement of amounts paid to the Secretary for the loan that is the subject of an approved borrower defense.

Federal Standard and Limitation Periods (§ 685.222(b), (c), and (d) and § 668.71)

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan.

Section 487 of the HEA provides that institutions participating in the title IV, HEA programs shall not engage in substantial misrepresentation of the nature of the institution's education program, its financial charges, or the employability of its graduates.

Current Regulations: Section 685.206(c) provides that a borrower defense may be asserted based upon any act or omission of the school that would give rise to a cause of action against the school under applicable State law. The current regulations in § 685.206(c) are described in more detail under "Borrower Responsibilities and Defenses (34 CFR 685.206)."

Subpart F of the Student Assistance General Provisions establishes the types of activities that may constitute substantial misrepresentation by an institution and defines "misrepresentation" and "substantial misrepresentation."

"Misrepresentation" is defined in proposed § 668.71(c) as a false, erroneous, or misleading statement that an eligible institution, one of its representatives, or any eligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting, or admissions services, makes directly or indirectly to a student, prospective student, a member of the public, an accrediting agency, a State agency, or the Secretary. Under the proposed regulations, we would clarify that a misleading statement also includes any statement that has the likelihood or tendency to deceive. A statement is any communication made in writing, visually, orally, or through other means. "Misrepresentation" also includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the institution required the student to make such an endorsement or testimonial to participate in a program.

"Substantial misrepresentation," also defined in § 668.71(c), means "any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment."

Proposed Regulations: Proposed § 685.222(b), (c), and (d) would establish a new Federal standard for a borrower defense.

Proposed § 685.222(b) would provide that if a borrower has submitted for consideration a nondefault, favorable contested judgment against the school based on State or Federal law from a court or administrative tribunal of competent jurisdiction for relief, the judgment might serve as a basis for a borrower defense. This would apply regardless of whether the judgment was obtained by the borrower as an individual or member of a class, or was obtained by a State attorney general (State AG) or other governmental agency. Judgments that could form the basis of a borrower defense under this section would not be limited to causes of action based on breach of contract or a substantial misrepresentation under § 685.222(c) or (d), respectively. Rather, they could also be based on other causes of action under State or Federal law, provided that the claim relates to the making of the borrower's Direct Loan for enrollment at the school, or the provision of educational services for which the loan was provided. There would be no time limitation on a borrower's ability to assert a borrower defense based on such a judgment.

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[6] See, *e.g., Sain* v. *Cedar Rapids Cmty. Sch. Dist.*, 626 NW.2d 115, 121 (Iowa 2001), recognizing that tort of negligent misrepresentation applicable in education context.

[7] As stated by the Department in 1993:

> [The Department] considers the loss of institutional eligibility to affect directly only the liability of the institution for Federal subsidies and reinsurance paid on those loans. . . . [T]he borrower retains all the rights with respect to loan repayment that are contained in the terms of the loan agreements, and [the Department] does not suggest that these loans, whether held by the institution or the lender, are legally unenforceable merely because they were made after the effective date of the loss of institutional eligibility.

58 FR 13337. *Armstrong* v. *Accrediting Council for Continuing Educ. & Training, Inc.*, 168 F.3d 1362, 1369 (D.C. Cir. 1999), *opinion amended on denial of reh'g*, 177 F.3d 1036 (D.C. Cir. 1999) (rejecting claim of mistake of fact regarding institutional accreditation as grounds for rescinding loan agreements).

[8] See, *e.g., Moy* v. *Adelphi Inst., Inc.*, 866 F. Supp. 696, 706 (E.D.N.Y. 1994) (upholding claim of common law misrepresentation based on false statements regarding placement rates.)

Proposed § 685.222(c) would define the conditions under which a breach of contract might be the basis for a borrower defense and specify the limitation period for recovering payments previously made on the loan in connection with such a claim. Under proposed § 685.222(c), a borrower would have a borrower defense if the school that the borrower received a Direct Loan to attend failed to perform its obligations under the terms of a contract with the student. A borrower would be permitted to assert, at any time, a claim based on breach of contract as a defense to repayment of the amount still outstanding on the loan. A borrower would be permitted to assert that same claim as grounds for recovery of amounts previously collected by the Secretary not later than six years after the breach by the school of its contract with the student.

Proposed § 685.222(d) would establish the conditions under which a substantial misrepresentation might serve as the basis for a borrower defense, and the limitation period for recovering payments previously made on the loan. Under proposed § 685.222(d), a borrower would have a borrower defense if the school or any of its representatives, or any institution, organization, or person with whom the school has an agreement to provide educational programs, or to provide marketing, advertising, recruiting, or admissions services, made a substantial misrepresentation that the borrower reasonably relied on when the borrower decided to attend, or to continue attending, the school. "Substantial misrepresentation" would have the definition set forth in subpart F, as amended by these proposed regulations. The proposed regulations would modify the definition of misrepresentation in § 668.71(c) to replace the word "deceive" with "mislead under the circumstances." The definition would also be expanded to specify that a misrepresentation includes any statement that omits information in such a way as to make the statement false, erroneous, or misleading.

Section 685.222(d) would also establish that a borrower may assert, at any time, a defense to repayment for amounts still owed on the loan to the Secretary, but may assert a right to recover funds previously collected by the Secretary no later than six years after the borrower discovers, or reasonably could have discovered, the information constituting the substantial misrepresentation.

The definition of "substantial misrepresentation" would require a borrower to have reasonably relied on a misrepresentation to his or her detriment. Under proposed § 685.222(d), in determining whether a borrower's reliance on a misrepresentation was reasonable, the decision maker, whether a designated Department official or hearing official, as described in detail under "Process for Individual Borrowers (34 CFR 685.222(e))," "Group Process for Borrower Defenses—General (34 CFR 685.222(f))," "Group Process for Borrower Defenses—Closed School (34 CFR 685.222(g))," and "Group Process for Borrower Defense Claims—Open School (34 CFR 685.222(h))," could consider, among other things, if the school or its representatives or other specified parties engaged in conduct such as:

- Demanding that the borrower make enrollment or loan-related decisions immediately;
- Placing an unreasonable emphasis on unfavorable consequences of delay;
- Discouraging the borrower from consulting an adviser, a family member, or other resources;
- Failing to respond to the borrower's requests for more information, including about the cost of the program and the nature of any financial aid; or
- Otherwise taking advantage of the borrower's distress or lack of knowledge or sophistication.

Reasons: The current borrower defense standard in § 685.206(c) is wholly dependent upon State law and, as a result, may provide uneven relief to students affected by the same bad practices but who attended schools in different States; a Federal standard would help to ensure fair and equitable treatment of all borrowers. Moreover, the reliance upon State law presents a significant burden for borrowers who are making a threshold determination as to whether they may have a claim and for Department officials who must determine the applicability and interpretation of laws that may vary from one State to another.

In crafting the Federal standard, the Department sought to incorporate not only the substantial misrepresentation regulation (34 CFR 668 subpart F), but also other causes of action upon which students had based complaints against schools in court cases. For example, the Federal standard maintains the borrower's ability to bring forward a claim based on a judgment determined by a court or administrative tribunal applying either State or Federal law. We also noted that a common claim that students had raised in lawsuits against postsecondary schools was breach of contract.[9] These bases for a borrower defense would ensure that the Federal standard provides effective relief opportunities for borrowers, and efficient administration of the process by which the Department and borrowers interpret and apply the standard, resulting in more timely resolution for all parties involved. However, we do not believe it would be appropriate to adopt a standard that would make the fact that the conduct violates an HEA requirement an automatic ground for a borrower defense, whether that claim is asserted directly or indirectly based on State law. Such conduct, to the extent it injures borrowers through substantial misrepresentation or a breach of contract, would already be covered by the proposed Federal standard. Moreover, it is not clear that any other such conduct forms an appropriate basis for loan discharge. Similarly, non-Federal negotiators suggested that the Department provide that all causes of action under State law constitute a basis for borrower defense. As explained previously, we believe that an approach based on State law would present a significant burden for borrowers and Department officials to determine the applicability and interpretation of States' laws and would increase the risk of uneven relief for similarly situated borrowers; therefore, we decline to adopt such a standard.

Non-Federal negotiators also proposed other bases for borrower defense, such as deceptive, unfair, or abusive conduct. We carefully considered such suggestions and decided that they were not appropriate for the borrower defense regulations. The Department believes it would face significant challenges in determining which cases of such conduct warrant relief. A wide variety of conduct can be considered deceptive, unfair, or abusive, under both State and Federal law, and characterizing particular conduct as falling under such standards would require the Department to engage in a nuanced application of complex legal doctrines that vary across jurisdictions and that often have not been subject to a degree of judicial development sufficient to make their application to the borrower defense context clear. Furthermore, some of the significant sources of law regarding such conduct would not easily transfer to the borrower defense context. Federal and State law empowers government agencies to pursue relief for deceptive and unfair conduct.[10] In exercising this authority, Federal and State agencies are charged with gathering facts about particular practices, and weighing appropriate policy considerations to determine whether the practice warrants the exercise of their authority under these laws. The borrower defense regulations, on the other hand, are directed necessarily toward claims by individuals, which should not be subject to public policy considerations. Nonetheless, we agree with the negotiators that deceptive, unfair, or abusive practices that may not otherwise constitute a misrepresentation under the proposed definition should be taken into consideration when we are evaluating a borrower defense claim. See "Substantial misrepresentation: Reasonable reliance" in this section for a discussion of how we propose to consider such conduct for the purpose of a borrower defense claim based on a substantial misrepresentation.

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[9] See, *e.g., Vurimindi* v. *Fuqua Sch. of Bus.*, 435 F. App'x 129, 133 (3d Cir. 2011); *Chenari* v. *George Washington Univ.*, No. CV 14–0929 (ABJ), 2016 WL 1170922 (D.D.C. Mar. 23, 2016).

The Department's substantial misrepresentation regulations (34 CFR part 668 subpart F) were informed by the FTC's policy guidelines on deception, and we believe they are more tailored to, and suitable for, use in the borrower defense context. The Department proposes that in the borrower defense context, certain factors addressing specific problematic conduct may be considered to determine whether a misrepresentation has been relied upon to a borrower's detriment, thus making the misrepresentation "substantial" under the proposed regulation. With regard to unfair and abusive conduct, we considered the available precedent and determined that it is unclear how such principles would apply in the borrower defense context as stand-alone standards. Such practices are often alleged in combination with misrepresentations and are not often addressed on their own by the courts. With this lack of guidance, it is unclear how such principles would apply in the borrower defense context. Moreover, many of the borrower defenses the Department has addressed or is considering have involved misrepresentations by schools, such as in the case of Corinthian. The Department believes that its proposed standard as described below will address much of the behavior arising in the borrower defense context. We believe that the standard that we are proposing appropriately addresses the Department's interests in accurately identifying and providing relief to borrowers for misconduct by schools; providing clear standards for borrowers, schools, and the Department to use in resolving claims; and avoiding for all parties the burden of interpreting other Federal agencies' and States' authorities in the borrower defense context.

As a result, the Department declines to adopt standards for relief based on unfair and abusive conduct. However, we note that actions against institutions may be taken, and borrowers may have avenues of relief outside of the Department, under other Federal or State statutes based on unfair and abusive conduct, which may result in State or Federal court judgments. Because the Department does not adopt the unfair and abusive conduct as a Federal borrower defense standards unless reduced to a contested judgment against the school under proposed § 685.222(b), the Department does not consider its own findings and determinations in the borrower defense context for the proposed standards in § 685.222 to be dispositive or controlling for actions brought by any other Federal or any State agency in the exercise of their power under the statutes on which they rely. We intend that, to the extent that borrowers fail to establish a claim under the regulations proposed here, such a determination does not affect the ability of another agency to obtain relief under a different standard that the agency is authorized to apply.

We note that the Department commonly uses the term "hearing official" in its regulations, such as 34 CFR subparts G and H (proceedings for limitation, suspension, termination and fines, and appeal procedures for audit determinations and program review determinations). The hearing officials referred to in the proposed regulations would make decisions and determinations independent of the Department official described in proposed § 685.222(e) to (h). Although here we use the term "Department official" to describe the individual who reviews and decides an individual borrower defense claim pursuant to § 685.222(e), for the group processes described in proposed § 685.222(g) and (h), we use the term "Department official" to describe the individual who performs a very different role. In the group process, the "Department official" is the individual who would initiate the group borrower defense process and who would present evidence and respond to any argument for the group borrower defense claimants. The decision would then be made by the hearing official, who is independent of the Department official who asserts the claims, and that decision would be based on the merits of the borrower defense claim as described in the proposed regulations, and not upon other considerations.

Judgment Against a School

As discussed, the Department is declining to adopt a standard based on applicable State law for loans first disbursed after July 1, 2017, due, in part, to the burden to borrowers and Department officials in interpreting and applying States' laws. While we believe that the proposed standards will capture much of the behavior that can and should be recognized as the basis for borrower defenses, it is possible that some State laws may offer borrowers important protections that do not fall within the scope of the Department's Federal standard. To account for the situations in which this is the case, the proposed regulations would provide, as a basis for a borrower defense, nondefault, contested judgments obtained against a school based on any State or Federal law, whether obtained in a court or administrative tribunal of competent jurisdiction. Under the proposed regulations, a borrower may use such a judgment as the basis for a borrower defense if the borrower was personally affected by the judgment, that is, the borrower was a party to the case in which the judgment was entered, either individually or as a member of a class that obtained the judgment in a class action lawsuit. As with all the borrower defense standards, to support a borrower defense claim, the judgment would be required to pertain to the making of a Direct Loan or the provision of educational services to the borrower. We believe that the proposed standard would allow for recognition of State law and other Federal law causes of action, but would also reduce the burden on the Department and borrowers of having to make determinations on the applicability and interpretation of those laws.

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[10] See, *e.g.*, 12 U.S.C. 5531, 15 U.S.C. 43 (authorities used or referenced, respectively, by the Consumer Financial Protection Bureau (CFPB) and State agencies, and the Federal Trade Commission (FTC)). For deceptive and unfair practices, the CFPB has stated that its standards are informed by the standards for the same terms as used by the FTC. See CFPB Bulletin 2013–7, "Prohibition of Unfair, Deceptive, or Abusive Acts or Practices in the Collection of Consumer Debts," (Jul. 10, 2013).

We also propose that a judgment obtained by a governmental agency, such as a State AG or a Federal agency, that a borrower can show relates to the making of the borrower's Direct Loan or the provision of educational services to the borrower, may also serve as a basis for a borrower defense under the standard, whether the judgment is obtained in court or in an administrative tribunal. Governmental agencies may not specifically join individual constituents as parties to a lawsuit; however, any resulting judgment may result in determinations that an act or omission of a school was in violation of State or Federal law and thus be the basis of a borrower defense for an individual within the group identified as injured by the conduct for which the government agency brought suit.

In considering a borrower defense claim, for either an individual borrower under proposed § 685.222(e) for individually-filed applications or for a group of borrowers under proposed § 685.222(f),(g), and (h), based upon a favorable judgment obtained in court or an administrative tribunal, the Department will consider the relief to which that judgment entitles the borrower based upon the judgment's findings regarding the school's liability under the state or Federal law at issue, whether or not the form and amount of relief was prescribed as part of the favorable judgment. Depending on the facts and circumstances of the judgment, the Department may determine relief as described in proposed § 685.222(i).[11] The Department will also consider to what degree the claimant has already received relief as an outcome of the judgment at issue, if any.

The Department is aware that many court cases may not result in contested, nondefault judgments, for reasons such as settlement. However, we are proposing to limit the basis for a borrower defense under § 685.222(b) to nondefault, contested judgments in courts or administrative tribunals. The Department is seeking to establish a process that results in accurate determinations of borrower defenses after a careful consideration of evidence. We are proposing to consider decisions made by courts and administrative tribunals, as the decision-making process in those forums similarly involves a consideration of evidence from all parties and the decision is one that has been made on the merits of the claim. By limiting this standard to nondefault, contested judgments, we would reduce or eliminate the need for the Department to evaluate the merit of borrower claims based on State law by including only those judgments that are in fact the product of litigation in which both claimant and school challenged the contentions of the opponent and a tribunal decided the case on the merits. The standard would echo the principle of res judicata, whereby parties are bound by a judgment entered by a court of competent jurisdiction and may not challenge that judgment either before that tribunal or before a different tribunal. Default judgments generally do not involve the same level of factual and evidentiary evaluation, or provide a decision on the merits resulting from a contested hearing where all parties have had an opportunity to present evidence and arguments. Similarly, settlements do not require a decision maker to reach a decision after an evaluation of the evidence. As a result, we propose that judgments may form the basis of a borrower defense only if they are nondefault, contested judgments rendered by a court or administrative tribunal of competent jurisdiction.

Although other court orders that do not rise to the level of a contested, nondefault judgment (*e.g.*, settlement or motion to dismiss orders) may not be used to satisfy the proposed judgment standard for borrower defense claims, the Department welcomes the submission of and will consider any such orders, other court filings, admissions of fact or liability, or other evidence used in such a court proceeding as evidence in the borrower defense process under the other proposed standards. The Department would also welcome the submission of and will consider any arbitration filings, orders, and decisions for consideration in the borrower defense process. Similarly, we recognize that a party to a suit or administrative proceeding may be barred from disputing a factual finding or issue decided in that proceeding if that fact or issue were to arise in a different case, even if the ruling on the fact or issue was not a final judgment on the merits resulting from a contested proceeding that meets the standard we propose here. We propose to take such findings and rulings on such specific facts and issues into account, and give them appropriate weight if principles of collateral estoppel would bar the school from disputing the matter.

Breach of Contract

In developing a new Federal borrower defense standard, we recognize that students enter into enrollment agreements and other contracts with the school to provide educational services and that borrowers have, over the years, asserted claims for relief against schools for losses arising from a breach of those contracts.[12] We therefore propose to include a separate ground for relief, based on a breach by the school of the contract with the borrower, because such claims may not necessarily fall within the scope of the substantial misrepresentation component of the Federal standard.

The terms of a contract between the school and a borrower will largely depend on the circumstances of each claim. For example, a contract between the school and a borrower may include an enrollment agreement and any school catalogs, bulletins, circulars, student handbooks, or school regulations.[13]

A non-Federal negotiator requested that we limit the standard to material breaches of contract.[14] The Department anticipates that it may receive borrower defense claims regarding breaches of contract that may not be considered to be material breaches that would have warranted a cancellation of the contract between the borrower and the school. For example, a breach of contract may pertain to a school's failure to fulfill a specific contractual promise to provide certain training or courses, but the school may have otherwise performed its other obligations under its contract with the borrower. The Department is comfortable with its ability to grant relief commensurate to the injury to a borrower alleged under the breach of contract standard, which may constitute full relief or partial relief with respect to a borrower's Direct Loan. The Department's proposed methods for determining relief, which would require a consideration of available evidence and arguments by a Department official or a hearing official, as applicable, are discussed in more detail under "Borrower Relief (34 CFR 685.222(i) and Appendix A)."

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[11] For example, the judgment may be one obtained by an enforcement agency and may not identify or require any individual as a party for whom particular relief is required; the judgment may simply provide injunctive relief, barring a particular practice as violating applicable law, but not addressing or requiring any relief for individuals; or the judgment may find liability, but also determine that the affirmative claim is time-barred.

[12] See, *e.g.*, Vurimindi v. Fuqua Sch. of Bus., 435 F. App'x 129 (3d Cir. 2011).

[13] In *Ross* v. *Creighton University*, 957 F.2d 410 (7th Cir. 1992), in describing the limits of a contract action brought by a student against a school, the court stated that there is " 'no dissent' " from the proposition that " 'catalogues, bulletins, circulars, and regulations of the institution made available to the matriculant' " become part of the contract. See 957 F.2d at 416 (citations omitted). See also *Vurimindi*, 435 F. App'x at 133 (quoting *Ross*).

[14] See Modern Law of Contracts § 11:1 (quoting Andersen, A New Look at Material Breach in the Law of Contracts, 21 UC Davis L. Rev. 1073 (1988)) ("[M]ateriality is best understood in terms of the specific purpose of the cancellation remedy that material breach entails.")

The non-Federal negotiator also requested that we exclude claims for educational malpractice or claims regarding schools' academic standards. As explained earlier in this discussion, we decline to impose a materiality requirement, but would consider the circumstances underlying a breach of contract borrower defense and award relief that is commensurate with the injury to the borrower. We also explain under "Borrower Defenses—General (§ 685.222(a))"))" that the Department does not consider claims relating to educational malpractice or academic disputes to be within the scope of the proposed borrower defense regulations.

Substantial Misrepresentation

The proposed Federal standard for borrower defense based upon a substantial misrepresentation is predicated on existing regulations in the Student Assistance General Provisions (34 CFR 668 subpart F) that address misrepresentation. These existing regulations provide a clear framework regarding the acts or omissions that would constitute misrepresentations as they relate to the nature of educational programs, the nature of financial charges, and the employability of graduates.

Under proposed § 685.222(d), to establish a borrower defense based on a substantial misrepresentation, a borrower must demonstrate that (1) there was a misrepresentation by the college made to the borrower, (2) the borrower reasonably relied on that substantial misrepresentation when he or she decided to attend, or to continue attending, the school, and (3) that reliance resulted in a detriment to the borrower.

Substantial Misrepresentation: Misrepresentation

We have proposed to revise the definition of "misrepresentation" in § 668.71 to provide clarity and specificity, as it is important that the definition of "misrepresentation," whether for the Department's enforcement purposes or in the borrower defense context, capture the full scope of acts and omissions that may result in a borrower being misled about the provision of educational services or making of a Direct Loan.

Specifically, we propose to replace the word "deceive" with "mislead under the circumstances." In some contexts the word "deceive" implies knowledge or intent on the part of the school, which is not a required element in a case of misrepresentation. Although we stated that the Department "considers a variety of factors, including whether the misrepresentation was intentional or inadvertent" in the preamble to the final rule for subpart F, 75 FR 66915, we believe that this proposed change would more clearly reflect the Department's intent that a misrepresentation does not require knowledge or intent on the part of the school. A non-Federal negotiator at the negotiated rulemaking requested that specific intent be considered as an element of misrepresentation. As the Department explained in the preamble to the final rule for subpart F, 75 FR 66914, while the Department declines to include a specific intent element, the Department has always operated within a rule of reasonableness and has not pursued sanctions without evaluating the available evidence in extenuation and mitigation as well as in aggravation. Whether using the definitions in subpart F for the Department's enforcement purposes or for evaluating a borrower defense claim, we intend to continue to consider the circumstances surrounding any misrepresentation before determining an appropriate response. That said, the general rule is that an institution is responsible for the harm to borrowers caused by its misrepresentations, even if such misrepresentations cannot be attributed to institutional intent. We believe this is more reasonable and fair than having the borrower (or the Department) bear the cost of such injuries. It is also reflective of the consumer protection laws of many States.

We also propose to add to the definition of "misrepresentation" a sentence addressing omissions, which would read, "Misrepresentation includes any statement that omits information in such a way as to make the statement false, erroneous, or misleading." Some non-Federal negotiators were concerned about the use of the word "information" as opposed to "facts." These non-Federal negotiators were concerned that the use of the word "facts" might imply a higher standard than would be required for a borrower to prove a substantial misrepresentation had occurred. Another non-Federal negotiator believed that a misrepresentation of "facts" more accurately described what should be required. Although we believe that the two words are effectively synonymous, we propose to use the word "information," as this change was endorsed by most of the non-Federal negotiators.

Non-Federal negotiators requested that the Department clarify what is meant by "misleading under the circumstances," as used in the proposed definition of "misrepresentation." One non-Federal negotiator asked whether the term "under the circumstances" was a reference to the use of the term by the Federal Trade Commission (FTC). In the 1983 FTC Policy Statement on Deception, the FTC clarified that, for a representation, omission, or practice to be deceptive, it must be likely to mislead reasonable consumers under the circumstances.[15] The FTC looks at the totality of the practice when determining how a reasonable recipient of the information would respond. If a representation is targeted to a specific audience, then the FTC determines the effect of the practice on a reasonable member of that group. We believe it is appropriate that, in reviewing a borrower defense claim based on a substantial misrepresentation, we similarly consider the totality of circumstances in which the statement or omission occurs, including the specific group at which a statement or omission was targeted, to determine whether the statement or omission was misleading under the circumstances. A statement made to a certain target group of students may not lead to reliance and injury; however, when the statement is made to a different target group that may not be the case.

Moreover, we propose to include the language "under the circumstances" to clarify that, to constitute a substantial misrepresentation, the misleading statement or omission must have been made in a situation where the borrower or student should have been able to rely upon the school to provide accurate information. For example, if a student is speaking with a course instructor about her difficulties paying tuition and the course instructor advises her to meet with the financial aid office because "there are scholarships available," that circumstance would most likely not create an expectation that the course instructor is assuring the student that she will receive a scholarship. However, if a student is speaking with a financial aid advisor and asks if she will receive scholarships to help cover the cost of her education and the financial aid advisor says, "Yes. Most of our students receive scholarships," that statement may be considered misleading under the circumstances, given that the speaker is someone whose professional role is to provide students with guidance pertaining to student aid.

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[15] FTC Policy Statement on Deception, 103 F.T.C. 110, 174 (1984) (appended to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984)), available at *www.ftc.gov/bcp/policystmt/ad-decept.htm.*

Substantial Misrepresentation: Reasonable Reliance

Although the definition of "substantial misrepresentation" in § 668.71 requires that the borrower reasonably relied on the misrepresentation, or could reasonably be expected to rely, proposed § 685.222(d) would require there to have been actual reasonable reliance. Section 668.71 refers to the Department's enforcement authority to impose fines, or limit, suspend, or terminate a school's participation in title IV, HEA programs. As an enforcement body acting in the public interest, the Department believes that it is appropriate for the Department to be able to stop misrepresentations even before any persons are misled, and thus to act upon misrepresentations that "could have been reasonably relied upon" by a person. However, borrower defenses relate to injuries to individual borrowers. Unlike the Department's interest in public enforcement of its regulations and laws, an individual borrower's interest in bringing a borrower defense is predicated upon the harm to the borrower. We also believe that an actual reliance requirement will protect the Federal Government, taxpayers, and institutions from unsubstantiated claims. As a result, we believe that it is appropriate to require that the evidence show that the misrepresentation at issue influenced the borrower, or led to the borrower's reliance on the misrepresentation, to the borrower's detriment. We note, however, that a rebuttable presumption of reasonable reliance may arise in claims brought for a group of borrowers, as we discuss in detail under "Group Process for Borrower Defenses—General (34 CFR 685.222(f))."

Generally, reasonable reliance refers to what a prudent person would believe and act upon if told something by another person. Moreover, reasonable reliance considers the representation or statement from the viewpoint of the audience the message is intended to reach—in this case, prospective or continuing students. Thus, in assessing whether a substantial misrepresentation has occurred, the Department would consider the facts of the case in the context of the audience.

As discussed, the standard requires not just that a borrower has relied upon a misrepresentation to the borrower's detriment, but also requires that the reliance be reasonable. As discussed in the introduction to this "Reasons" section, non-Federal negotiators representing students and borrowers, consumer advocacy organizations, and legal assistance organizations that represent students and borrowers, advocated that the Federal standard include a provision for abusive practices on the part of a school, particularly as they relate to high pressure or aggressive sales tactics. We agree that there has been evidence of such conduct on the part of some schools, but believe it would be difficult to develop clear, consistent standards as to when such conduct, in the absence of any misrepresentation by the school, should give rise to a right of relief from the loans taken out to attend the school. However, we also believe that such high pressure or aggressive sales tactics may make borrowers more likely to rely upon a misrepresentation. As a result, we have determined that reliance on a misrepresentation may be appropriately viewed as more reasonable when the misrepresentation is made in the context of certain circumstances, including those that may be considered to be high pressure or aggressive sales tactics.

To address these concerns, in proposed § 685.222(d) we include a non-exhaustive list of examples of factors that, if present in conjunction with a misrepresentation on the part of the school, would likely elevate that misrepresentation to a substantial misrepresentation. However, as proposed by the Department, the factors by themselves would not necessarily mandate a finding of substantial misrepresentation, nor would the absence of any of the factors defeat a borrower defense based on substantial misrepresentation. It may be entirely reasonable for a borrower to rely on a misrepresentation without any of these factors present. Rather, as proposed, the factors would be non-exhaustive examples of conduct that could be considered in a determination of whether a borrower's reliance on a misrepresentation was reasonable, even if such reliance would not have been reasonable in the absence of such conduct, thus making the misrepresentation substantial.

Specifically, we looked at the borrower defenses before the Department and comments from non-Federal negotiators regarding issues such as schools making insistent demands of students to make commitments to enroll and the borrowers' lack of information and resources. As a result, we propose that a misrepresentation, when coupled with conduct that affects a borrower's understanding of his or her decision-making timeframe, such as demanding that the borrower make enrollment or loan-related decisions immediately or placing an unreasonable emphasis on unfavorable consequences of delay, may lead a borrower to reasonably rely upon the misrepresentation and, thus, elevate the misrepresentation to a substantial misrepresentation for the purposes of asserting a borrower defense. Similarly, conduct that affects a borrower's information-gathering regarding the risks and potential benefits of his or her decision, such as discouraging a borrower from consulting an advisor, a family member, or other resources or failing to respond to a borrower's reasonable requests for information, may lead a borrower to reasonably rely upon the misrepresentation for the purposes of asserting a substantial misrepresentation as a borrower defense. We also recognize that school conduct that takes advantage of the borrower's distress or lack of knowledge or sophistication may also elevate the misrepresentation to a substantial misrepresentation, by way of affecting a borrower's reasonable reliance on a misrepresentation, for the purposes of borrower defense. For example, a school may be found to have made statements that would not have been misleading to a borrower of average English ability; however, when made to a borrower with limited English proficiency in a way that takes advantage of the borrower's lack of knowledge or sophistication, the circumstances may warrant a borrower defense under the standard.

As noted above, a non-Federal negotiator requested that the Department use a "justifiable" reliance standard. While a reasonable reliance standard looks to whether a reasonably prudent person would be justified in his or her reliance and may be measured against the behavior of other persons, the justifiable reliance standard is measured by reference to the plaintiff's capabilities and knowledge.[16] As discussed, the proposed standard would allow consideration of practices that would impact a specific borrower's understanding and reliance upon a misrepresentation in a way that would reference the borrower's understanding and knowledge. However, the Department believes that it is appropriate for the proposed standard to consider the perspective of not only the borrower, but of similarly situated borrowers, especially to the extent it is composed of other Direct Loan borrowers or potential Direct Loan borrowers who may be subject to the same misrepresentations by the school. As discussed under "Group Process for Borrower Defenses—General (34 CFR 685.222(f))," "Group Process for Borrower Defenses—Closed School (34 CFR 685.222(g))," and "Group Process for Borrower Defense Claims—Open School (34 CFR 685.222(h))," in addition to proposing this regulation to provide relief for individual borrowers who have filed applications for relief, the borrower defense regulation also proposes that the Department may initiate a process for determinations as to both a school's liability and as to borrower defenses for a group of borrowers, which may include those who have not applied for relief. As discussed under "Group Process for Borrower Defenses—General (34 CFR 685.222(f))," the Department anticipates that such proceedings, in which Secretary may recover from the school the amount of losses from granting borrower defense relief, will have a significant deterrent effect on the school and promote compliance among other schools in a way that will benefit other borrowers. By considering both the individual borrower's perspective and the perspective of similarly situated borrowers at the institution, we believe the Department official or hearing official, as applicable, would be able to determine an amount of relief that is fair to the borrower and protect the Department's general interest in other Direct Loan borrowers who have also attended the school and who may have been subject to the same misrepresentations.

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[16] See Restatement (Third) of Torts: Liab. for Econ. Harm § 11 TD No 2 (2014)("[R]easonableness is measured against community standards of behavior. Justifiable reliance has a personalized character. It is measured by reference to the plaintiff's capabilities and knowledge; a plaintiff's sophistication may affect a court's judgments about what dangers were fairly considered obvious.").

The non-Federal negotiator also requested that we limit the standard to material misrepresentations. It is the Department's understanding that under Federal deceptive conduct prohibitions, a misrepresentation must be material for deception to occur. In this context, material misrepresentation involves information important to consumers, likely to affect the consumer's choice or conduct regarding a product or service.[17] The Department believes that a materiality element is not required in either the proposed amendments to the definition for the Department's enforcement authority under § 668.71 or as this definition is adopted for the purposes of the proposed Federal standard under § 685.222(d). In the context of the Department's enforcement authority, the Department previously declined in 2010 to adopt a materiality component, stating that the regulatory definition of "substantial misrepresentation" is "clear and can be easily used to evaluate alleged violations of the regulations." 75 FR 66916.

In adopting the definition of "substantial misrepresentation" for the purposes of borrower defense, the Department similarly believes that the definition is clear and can be easily used to evaluate borrower defenses. Moreover, a substantial misrepresentation in the borrower defense context incorporates similar concepts to materiality. Under proposed § 685.222(d), the borrower must show that he or she "reasonably relied" upon the misrepresentation at issue. As discussed above, generally materiality refers to whether the information in question was information to which a reasonable person would attach importance to, in making the decision at issue. Similarly, in determining whether the borrower reasonably relied on the misrepresentation, the Department would consider whether the misrepresentation related to information to which the borrower would reasonably attach importance in making the decision to enroll or continue enrollment at the school. As a result, the Department considers it unnecessary to add an explicit materiality element to the definition of "substantial misrepresentation," for the purposes of claims under the borrower defense regulations.

Substantial Misrepresentation: The Borrower's Detriment

The definition of "substantial misrepresentation," for the purpose of proposed § 685.222(d), would require that the borrower reasonably relied on the misrepresentation to the borrower's detriment. As noted previously, the proposed borrower defense regulations are intended to provide relief for individual borrowers for schools' wrongful conduct that led in a meaningful way to harm or injury to the borrower based upon the borrower's specific circumstances. We believe that a demonstration of detriment or injury to the borrower will protect the Federal government, taxpayers, and institutions from unsubstantiated claims. As a result, we believe that it is appropriate to require that a preponderance of the evidence demonstrate the misrepresentation at issue influenced the borrower, or led to the borrower's reliance on the misrepresentation, to the borrower's detriment.

Limitation Periods

For each of the bases for a borrower defense under the proposed Federal standard, the Department considered whether there should be a limitation on the time period during which borrower defense claims may be brought and, if so, what the limitation period should be. Because the availability of evidence for a borrower defense that is based on a judgment in a court or administrative tribunal is not a concern, as the only evidence required is the judgment itself, we propose no limitation period under proposed § 685.222(b) for those claims. However, for the bases for a borrower defense in proposed § 685.222(c) and (d), we believe a limitation period is appropriate. A limitation period for borrower defense claims based on a breach of contract or substantial misrepresentation, by encouraging borrowers to assert borrower defense claims while memories and evidence are fresh, would make the claim resolution process more reliable.

When considering a limitation period that would provide for a reasonable amount of time during which a borrower might submit a claim, we also recognized that common law generally allows a debtor to assert claims from the same transaction as the loan at any time as a defense to repayment of the loan, but requires a debtor to assert any claim for recovery of payments already made within the deadlines that would apply had the debtor brought suit on the claim. Consistent with that generally applicable principle, we propose here that no limitation period would apply to borrower defense claims asserted under proposed § 685.222(c) or (d) as defenses to repayment of any outstanding loan obligation. To select an appropriate limit on the period during which a claim for recovery may be made, we looked to the existing limitation periods under State and Federal law for similar claims. With regard to a borrower defense claim based on a substantial misrepresentation, we considered, among other things, limitation periods applicable to consumer protection and fraud claims, as those claims often address misleading or deceptive conduct and are, thus, analogous to claims based on a substantial misrepresentation.

The Department's research indicates that six years is one of the breach of contract limitation periods most commonly used by States, as well as the limitation period applicable to non-tort claims against the United States, 28 U.S.C. 2401(a).

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[17] See, *e.g.,* F.T.C. Policy Statement on Deception, 103 F.T.C. at 182; see also Restatement (Second) of Torts § 538 (1977) ("The matter is material if (a) a reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question; or (b) the maker of the representation knows or has reason to know that its recipient regards or is likely to regard the matter as important in determining his choice of action, although a reasonable man would not so regard it.").

Because many non-Federal negotiators' discussions of school misconduct included discussions of fraud, the Department also considered existing limitation periods for fraud. Although limitation periods under State consumer protection laws vary, our research indicates that three years is one of the most common limitation periods used by the States.

For claims for recovery of payments already made that are based on breach of contract, we propose a six-year limitation period that would begin upon the breach of contract. For claims for recovery of payments already made that are based on a substantial misrepresentation, we also propose six years as the limitation period, but the period would begin when a borrower discovers or should have reasonably discovered the facts that constitute the misrepresentation. Although six years is longer than the period afforded under many State laws for fraud and consumer protection, other States do provide a six-year limitation period for similar claims, and the Department believes a six-year period would provide sufficient time for a borrower to gather evidence related to a substantial misrepresentation.

The non-Federal negotiators representing consumer advocates, legal assistance organizations, and State AGs suggested that no limitation period should apply to defenses to repayment of remaining amounts owed on a debt, under the legal principle of recoupment (asserting a claim as a defense to repayment). As noted earlier, we propose to adopt this position. Later, some non-Federal negotiators suggested that, notwithstanding the distinction under State and Federal law between recoupment and asserting a claim for an affirmative recovery of amounts previously paid, the Department should apply no limitation period to affirmative claims for recovery. In support of this position, they cited the Department's ability to collect on a Direct Loan until it is paid in full or discharged. Other non-Federal negotiators, however, expressed concerns about having no limitation period for borrower defense claims, stating that such an approach would result in significant difficulties for a school in responding to allegations due to a lack of documentary evidence and witnesses and would subject schools to broader liability than under the current borrower defense standard based upon State law under § 685.206(c).

After careful consideration of the legal principles cited by the negotiators, we do not believe there is justification to depart from the requirements that Federal and State courts generally apply to affirmative claims to recover amounts already collected on a debt. We believe the proposed limitation periods are appropriate for the reasons stated above, regarding existing periods of limitation in State and Federal law and the Department's interest in the reliability of the claim resolution process. However, we seek comment on whether the Department should adopt different limitation periods for borrower defense claims under § 685.222(c) and (d), and, if so, what the limitation periods should be, what the supporting rationale for those periods would be, and why those other limitation periods would meet the objectives outlined in this section.

Non-Federal negotiators asked the Department to clarify, with respect to the substantial misrepresentation limitation period, when a borrower would be deemed to have discovered, or when a borrower should have reasonably discovered, the facts constituting a substantial misrepresentation. For example, a borrower may learn of a substantial misrepresentation upon discussion with other students or borrowers, or it may be deemed that a borrower should have reasonably known of the facts underlying a substantial misrepresentation if facts concerning the misrepresentation are published in nationwide news articles. However, the borrower must demonstrate when the borrower discovered the facts underlying the specific substantial misrepresentation forming the basis of the borrower defense. For example, knowledge of one particular problem at a school would not necessarily give notice of other, unrelated problems. Thus, student warnings issued for gainful employment programs under 34 CFR 668.410 or relating to repayment rate under proposed § 668.41(h), or the disclosure of proposed financial protections, such as a letter of credit, under proposed § 668.41(i), would warn students about whether a program could close soon, the repayment outcomes of borrowers at the school, or the school's financial risk, but would not put students on notice of misrepresentations by the school of matters other than earnings and debt of graduates or financial soundness.

To demonstrate that the borrower is asserting a borrower defense within six years of discovery of the facts on which the claim is based, the borrower should explain in the borrower defense application how he or she learned of the substantial misrepresentation and include any applicable documents or other information demonstrating the source of the knowledge. Again, we note that, under the proposed regulations, the borrower may assert a claim based on substantial misrepresentation solely for discharge of the remaining amount owed on the Direct Loan at any time.

Process for Individual Borrowers (§ 685.222(e))

Statute: Section 455 of the HEA sets forth the terms and conditions of Direct Loan Program loans.

Current Regulations: Section 685.206(c) states that borrowers have the right to assert borrower defenses, but does not establish any process for doing so.

Proposed Regulations: Proposed § 685.222(e) would establish the process for an individual borrower to bring a borrower defense. Proposed § 685.222(e)(1) would describe the steps an individual borrower must take to initiate a borrower defense claim. First, an individual borrower would submit an application to the Secretary, on a form approved by the Secretary. In the application, the borrower would certify that he or she received the proceeds of a loan to attend a school; would have the opportunity to provide evidence that supports the borrower defense; and would indicate whether he or she has made a claim with respect to the information underlying the borrower defense with any third party, and, if so, the amount of any payment received by the borrower or credited to the borrower's loan obligation. The borrower would also be required to provide any other information or supporting documentation reasonably requested by the Secretary. The Secretary would provide notice of the borrower's application for a borrower defense to the school at issue.

Proposed § 685.222(e)(2) would describe the treatment of defaulted and nondefaulted borrowers upon the Secretary's receipt of the borrower defense claim. If the borrower is not in default on the loan for which a borrower defense has been asserted, the Secretary would grant an administrative forbearance, notify the borrower of the option to decline the forbearance and to continue making payments on the loan, and provide the borrower with information about the availability of the income-contingent repayment plans under § 685.209 and the income-based repayment plan under § 685.221. If the borrower is in default on the loan for which a borrower defense has been asserted, the Secretary would suspend collection activity on the loan until the

Secretary issues a decision on the borrower's claim; notify the borrower of the suspension of collection activity and explain that collection activity will resume if the Secretary determines that the borrower does not qualify for a full discharge; and notify the borrower of the option to continue making payments under a rehabilitation agreement or other repayment agreement on the defaulted loan.

To process the claim, the Secretary would designate a Department official to review the borrower's application to determine whether the application states a basis for a borrower defense, and would resolve the claim through a fact-finding process conducted by the Department official. As part of the fact-finding process, the Department official would consider any evidence or argument presented by the borrower and would also consider any additional information, including Department records, any response or submissions from the school, and any additional information or argument that may be obtained by the Department official. The Department official would identify to the borrower, and may identify to the school, the records he or she considers relevant to the borrower defense. The Secretary provides any of the identified records upon reasonable request to either the school or the borrower.

At the conclusion of the proposed fact-finding process, the Department official would issue a written decision. The decision of the Department official would be final as to the merits of the claim and any relief that may be warranted on the claim. If the Department official approves the borrower defense, the Department official would notify the borrower in writing of that determination and of the relief provided as determined under § 685.222(i) or, if the Department official denies the borrower defense in full or in part, the Department official would notify the borrower of the reasons for the denial, the evidence that was relied upon, the portion of the loan that is due and payable to the Secretary, whether the Secretary will reimburse any amounts previously collected, and would inform the borrower that if any balance remains on the loan, the loan will return to its status prior to the borrower's application. The Secretary would also inform the borrower of the opportunity to request reconsideration of the claim based on new evidence not previously provided or identified as relied upon in the final decision.

Under proposed § 685.222(e)(5)(ii), the Secretary could reopen a borrower defense application at any time to consider evidence that was not considered in making the previous decision. The Secretary could also consolidate individual applications that have common facts and claims and resolve such borrower defenses as a group through the group processes described under "Group Process for Borrower Defenses—General (34 CFR 685.222(f))," "Group Process for Borrower Defenses—Closed School (34 CFR 685.222(g))," and "Group Process for Borrower Defense Claims—Open School 34 CFR 685.222(h))."

Finally, the Secretary could initiate a separate proceeding to collect from the school the amount of relief resulting from a borrower defense.

Reasons: The current regulations for borrower defense do not provide a process for claims. Since Corinthian's 2015 bankruptcy, the Department has received a number of borrower defense claims from individuals outside of the Federal loan relief process initiated by the Department for Corinthian students in response to the bankruptcy. The lack of guidance has led to confusion for borrowers and inconsistency in the types and format of information submitted for such requests. To ease the Department's administrative burden in reviewing such requests and the burden of borrowers making borrower defense claims, we propose § 685.222(e) to establish clear guidelines for individuals who wish to submit a borrower defense claim.

Many of the non-Federal negotiators at the negotiated rulemaking sessions emphasized the advantages of deciding claims on a group basis wherever possible. In response to these arguments, the proposed regulations would permit the Secretary to consolidate individual claims that present common facts and claims pertaining to the same school and resolve those claims through the group processes described under "Group Process for Borrower Defenses—General (34 CFR 685.222(f))," "Group Process for Borrower Defenses—Closed School (34 CFR 685.222(g))," and "Group Process for Borrower Defense Claims—Open School (34 CFR 685.222(h))."

To standardize the form of the requests and facilitate the Department's efficient review, under the proposed process, the Department would create an easy-to-use claim form for borrower defense for use by individual borrowers to provide information regarding the borrower's Direct Loan and evidence the borrower may have in support of his or her claim, or such other information that the Department may reasonably decide is necessary. In addition, the application would require the borrower to indicate if he or she has submitted a claim to, and received money from, entities aside from the Department for the same alleged harm underlying the borrower defense claim. We believe requesting such information is important to make clear to borrowers the information the Department needs from them, to ensure the fairness of the discharge process, and to protect Federal taxpayers by prohibiting borrowers from collecting relief from multiple parties for the same claim. If the borrower should choose to be represented by counsel, the Department would work directly with such a representative, upon receipt of the borrower's consent.

One non-Federal negotiator requested that the Department clarify what evidence might be considered by the Department official, or hearing official, in the group processes discussed under "Group Process for Borrower Defenses—General (34 CFR 685.222(f))," "Group Process for Borrower Defenses—Closed School (34 CFR 685.222(g))," and "Group Process for Borrower Defense Claims—Open School (34 CFR 685.222(h))," when adjudicating a claim for borrower defense. Evidence that a borrower could submit as part of the application may include, but would not be limited to: The borrower's own statement or declaration regarding the claim, statements of any other persons that the borrower believes support the claim, and copies of any documents that may be relevant to the borrower's claim. These documents may include, for example, copies of the enrollment agreement with the school, school catalogs, bulletins, letters or other communications, Web page print-outs, circulars, advertisements, or news articles. In addition to written materials, documents may also include any media by which information can be preserved, such as videos or recordings. For applications filed by an individual, a Department official may also contact the borrower to obtain more information and such oral statements may also be evidence that would be considered in the borrower defense process. The Department official may also consider other information that the Department has in its possession, such as information obtained from the school or otherwise obtained by the Department or third parties (*e.g.*, accreditors, government agencies). The kind of evidence that will be needed and available to determine the validity of the borrower's claim will vary from case to case and will depend on the specific circumstances of each borrower's claim.

The Department also proposes in § 685.222(e)(7) that the Secretary may initiate a separate proceeding to collect from the school the amount of relief resulting from a borrower defense determined under § 685.222(e). As proposed, the Secretary may initiate a proceeding to recover against the school, but may also determine that a separate proceeding will not be initiated. For example, the Secretary may decide not to initiate such a proceeding due to evidentiary constraints. The Department intends that the proposed fact-finding process used for an individual borrower defense claim would be separate and distinct from the Department's efforts to recover from schools any losses arising from a borrower defense. The final decision would determine the amount of relief to be awarded, which in turn would determine the amount of losses to the Secretary that the Department can then collect from the school. However, the Department's proposed regulation would not condition borrower relief awarded in this proceeding on whether the Secretary has the actual ability to recover those losses from the school. Rather, the Department will provide relief to the borrower according to the final decision of this process, and the Department's action to recover losses from the school will follow in a separate proceeding.

Group Process for Borrower Defenses—General (§ 685.222(f))

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan.

Section 487 of the HEA provides that institutions participating in the title IV, HEA programs shall not engage in substantial misrepresentation of the nature of the institution's education program, its financial charges, or the employability of its graduates.

Current Regulations: Section 685.206(c) states that borrowers have the right to assert borrower defenses, but does not establish any process for doing so.

Proposed Regulations: Proposed § 685.222(f) would provide a framework for the borrower defense group process, including descriptions of the circumstances under which borrower defense claims asserted by or with regard to a group could be considered and the process the Department would follow for borrower defenses for a group.

Generally, we propose that the Secretary would initiate a review of borrower defense claims asserted by or with regard to a group. This would occur when, upon consideration of factors including, but not limited to, the existence of common facts and claims among borrowers that are known to the Secretary, fiscal impact, and the promotion of compliance by the school or other title IV, HEA program participants, the Secretary determines it is appropriate to initiate a process to determine whether a group of borrowers has a common borrower defense.

The proposed regulations would also provide for members of the group to be identified by the Secretary from individually filed applications or from any other source of information. Moreover, if the Secretary determines that common facts and claims exist that apply to borrowers who have not filed an application, the Secretary could include such borrowers in the group.

Once a group of borrowers with common facts and claims has been identified, under § 685.222(f)(2)(i), the Secretary would designate a Department official to present the group's common borrower defense claim in the fact-finding process described in § 685.222(g) or (h) of this section, as applicable, and would provide each identified member of the group with notice that allows the borrower to opt out of the proceeding. The Secretary would notify the school, as practicable, of the basis of the group's borrower defense, the initiation of the fact-finding process, any procedure by which to request records, and how the school should respond.

For a group of borrowers with common facts and claims for which the Secretary determines there may be a borrower defense on the basis of a substantial misrepresentation that was widely disseminated, there would be a rebuttable presumption that all of the members of the group reasonably relied on the misrepresentation.

Reasons: In response to requests by non-Federal negotiators representing students and borrowers, consumer advocacy organizations, and legal assistance organizations, we propose to establish a group claim process that is designed to be simple, accessible, and fair, and to promote greater efficiency and expediency in the resolution of borrower defense claims.

The Secretary would determine whether a group process should be initiated after consideration of relevant factors. We expect that the Secretary would initiate a group process only where there are common facts and claims among the borrowers. These common facts and claims may emerge, for example, from the Department's analysis of individual borrower defense claims; the identification by the Secretary of factors that indicate a school has engaged in substantial misrepresentation that has potentially impacted a group of borrowers; the Department's receipt of a judgment possibly affecting a group of borrowers in the same way; the Department's identification of a breach of contract that may affect a group of borrowers; or, for loans first disbursed before July 1, 2017, the Department's knowledge of a violation of State law relating to the making of Direct Loans or provision of education services affecting a group of borrowers. Evidence for any of these determinations might come from submissions to the Department by claimants, State AGs or other officials, or advocates for claimants, as well as from the Department's investigations.

We also propose that if the Secretary determines that there are common facts and claims that may affect numerous borrowers, the Secretary may include in the group those borrowers whom we can identify from Department records who are likely to have experienced conduct involving common facts as those who have filed, and who could be expected to have similar claims, even if those we identify have not filed a borrower defense application. The Department believes that including such borrowers would allow for faster relief for a broader group of borrowers than if the process is limited to just those who file applications for relief.

In proposed § 685.222(f), we specify that, in determining whether to initiate a group process, the Secretary may also consider other factors. These factors include items such as the fiscal impact of considering claims only in individual instances and the significant amount of administrative resources required to consider such claims one by one, the promotion of compliance by pursuing recovery from the schools in aggregated amounts that may affect a school's interests, and the deterrent effect such actions can be expected to have on both the individual school and similarly situated schools. Although the Department intends to carefully weigh the above factors in deciding whether to initiate a group process—which we anticipate will have more formal processes and procedures, involvement by the school, and commitment of administrative resources by the Department—the Department's consideration of such factors for the initiation of a group process would not prevent individual borrowers from obtaining determinations. Individual borrowers would be able to continue to seek relief and obtain determinations as described in proposed § 685.222(e), and could also opt out of a group process as described in proposed § 685.222(f)(2) at the outset and utilize the process in § 685.222(e).

We believe the Secretary is best positioned to make a determination as to whether a group process is appropriate since the Secretary is likely to have the most information regarding the circumstances that warrant use of a group process. However, non-Federal negotiators requested that State AGs and legal assistance organizations be allowed to request that the Secretary initiate a group process and to make submissions in those processes, and that the Secretary be required to issue written responses to such requests and submissions. The Department always welcomes cooperation and input from other Federal and State enforcement entities, as well as legal assistance organizations and advocacy groups. In our experience, such cooperation is more effective when it is conducted through informal communication and contact. Accordingly, we have not incorporated a provision regarding written responses from the Secretary, but plan to create a point of contact for State AGs to allow for active channels of communication on borrower defense issues, and reiterate that we welcome a continuation of cooperation and communication with other interested groups and parties. As indicated above, the Department is also fully ready to receive and make use of evidence and input from other stakeholders, including advocates and State and Federal agencies.

In response to negotiator concerns, the proposed group process is designed to ensure that the school has an opportunity for a full and fair opportunity to be heard regarding claims. We propose that, when the Secretary determines that the group claim process is appropriate, the Department would assume responsibility for presenting the group's claims in the administrative proceeding against the school. Because the administrative proceeding will determine both the validity of the borrowers' claims and the liability of the school to the Department, the Department believes that it is the appropriate party to present the claims. Additionally, by undertaking this role, the Department intends to reduce the likelihood that third parties, such as debt "counselors" or collection companies, are able to prey upon borrowers unfamiliar with the borrower defense process by promoting their services to arrange relief, and to lessen the legal costs and administrative burden to borrowers in the process.

In response to negotiator concerns, we have proposed that a borrower could opt out of a group borrower defense claim action, and instead submit an individual application. This would allow the individual to make his or her own case (with or without legal representation), giving the individual the same right to control the assertion of the individual's claim as would be available in a class action. Fed. R. Civ. Proc. 23(c). A determination made in the administrative proceeding on the group claim would be given substantial weight in any subsequent evaluation of the individual claim of a borrower who "opted out" of the group process.

Finally, for a group of borrowers with common facts and claims for which the Secretary determines there may be a borrower defense on the basis of a substantial misrepresentation that was widely disseminated, there would be a rebuttable presumption that all of the members of the group to which the representation was made reasonably relied on the misrepresentation. If a representation that is reasonably likely to induce a recipient to act is made to a broad audience, we consider it logical to presume that those audience members did in fact rely on that representation. We believe there is a rational nexus between the publication of the misrepresentation and the likelihood of reliance by the audience such that we propose to adopt a rebuttable presumption that all members of the group did in fact so rely.[18] This rebuttable presumption would shift the burden to the school, requiring the school to demonstrate that individuals in the identified group did not in fact rely on the misrepresentation at issue.

Group Process for Borrower Defenses—Closed School (§ 685.222(g))

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan.

Current Regulations: Section 685.206(c) states that borrowers may assert borrower defenses, but does not establish any process for doing so.

Proposed Regulations: Section 685.222(g) of the proposed regulations would establish a process for review and determination of borrower defense claims for groups identified by the Secretary for which the claims relate to Direct Loans to attend a school that has closed and has provided no financial protection currently available to the Secretary from which to recover any losses based on borrower defense claims, and for which there is no appropriate entity from which the Secretary can otherwise practicably recover such losses.

Under proposed § 685.222(g)(1), a hearing official would review the Department official's basis for identifying the group and resolve the claim through a fact-finding process. As part of that process, the hearing official would consider any evidence and argument presented by the Department official on behalf of the group and, as necessary to determine any claims at issue, on behalf of individual members of the group. The hearing official would consider any additional information the Department official considers necessary, including any Department records or response from the school or a person affiliated with the school as described in § 668.174(b) as reported to the Department or as recorded in the Department's records, if practicable. As discussed under "Borrower Relief (34 CFR 685.222(i) and Appendix A)," the hearing official may also request information as described in § 685.222(i)(1).

The hearing official would issue a written decision determining the merits of the group borrower defense claim. If the hearing official approves the borrower defense, that decision would notify the members of the group of that determination and of the relief provided on the basis of the borrower defense claim. If the hearing official denies the borrower defense in full or in part, that decision would state the reasons for the denial, the evidence that was relied upon, the portion of the loans that are due and payable to the Secretary, and whether reimbursement of amounts previously collected is granted, and would inform the borrowers that if any balance remains on their respective loans, the loans will return to their statuses prior to the group process. The Secretary would provide copies of the written decision to the members of the group, and, as practicable, to the school.

Similar to the individual claim process, the hearing official's decision would be final as to the merits of the group borrower defense and any relief that may be granted on the group borrower defense. However, if relief for the group was denied in full or in part, an individual borrower would be able to request that the Secretary reconsider the borrower defense upon the identification of new evidence in support of the borrower's individual borrower defense claim as described in proposed § 685.222(e)(5)(i). Additionally, the proposed regulation provides that the Secretary may also reopen a borrower defense application at any time to consider evidence that was not considered in making the previous decision.

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[18] Case law requires no more than such a rational nexus:

> . . . [A]dministrative agencies may establish presumptions, "as long as there is a rational nexus between the proven facts and the presumed facts." *Cole* v. *U.S. Dep't of Agric.*, 33 F.3d 1263, 1267 (11th Cir. 1994); *Sec'y of Labor* v. *Keystone Coal Mining Corp.*, 151 F.3d 1096, 1100–01 (D.C. Cir. 1998) (stating that presumptions are permissible "if there is 'a sound and rational connection between the proved and inferred facts' ") (quoting *Chem. Mfrs. Ass'n* v. *Dep't of Transp.*, 105 F.3d 702, 705 (D.C. Cir. 1997)). "Appellants bear 'the heavy burden of demonstrating that there is no rational connection between the fact proved and the ultimate fact to be presumed.' " *USX Corp.*, 395 F.3d at 170 (quoting *Cole*, 33 F.3d at 1267).

U.S. Steel Corp. v. *Astrue*, 495 F.3d 1272, 1284 (11th Cir. 2007).

Reasons: When a group borrower defense is asserted with respect to Direct Loans to attend a school that has closed and has provided no financial protection currently available to the Secretary from which to recover any losses based on borrower defense claims, and for which there is no appropriate entity such as a corporate owner of a school from which the Secretary can otherwise practicably recover such losses,[19] the proposed regulations on the process for resolving the claim would focus on the arguments and evidence that may be brought by the Department official before a hearing official.

We expect that the fact-finding process in this case would occur after a school has liquidated its assets and, thus, would not typically involve the school. The evidence and records used to make a determination would be largely composed of the common facts and claims that served as the basis for forming the group.

While this group borrower defense process would not typically involve the school, a hearing official would still preside over the fact-finding process to ensure that the decision is based on a sound and thorough evaluation of the merits of the claim. The hearing official would consider the arguments and evidence presented by the designated Department official and, as discussed under "Borrower Relief (34 CFR 685.222(i) and Appendix A)," may also request information under proposed § 685.222(i)(1).

Group Process for Borrower Defense Claims—Open School (§ 685.222(h))

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan.

Current Regulations: Section 685.206(c) states that borrowers may assert borrower defenses, but does not establish any process for doing so.

Proposed Regulations: Proposed § 685.222(h) would establish the following process for groups identified by the Secretary for which the borrower defense is asserted with respect to Direct Loans to attend an open school.

A hearing official would resolve the borrower defense and determine any liability of the school through a fact-finding process. As part of the process, the hearing official would consider any evidence and argument presented by the school and the Department official on behalf of the group and, as necessary, evidence presented on behalf of individual group members. As discussed under "Borrower Relief (34 CFR 685.222(i) and Appendix A)," the hearing official may also request information as described in § 685.222(i)(1).

The hearing official would issue a written decision, regardless of the outcome of the group borrower defense. If the hearing official approved the borrower defense, that decision would describe the basis for the determination, notify the members of the group of the relief provided on the basis of the borrower defense, and notify the school of any liability to the Secretary for the amounts discharged and reimbursed.

If the hearing official denied the borrower defense in full or in part, the written decision would state the reasons for the denial, the evidence that was relied upon, the portion of the loans that are due and payable to the Secretary, whether reimbursement of amounts previously collected is granted, and would inform the borrowers that their loans—in the amounts determined to be enforceable obligations—will return to their statuses prior to the group borrower defense process. It also would notify the school of any liability to the Secretary for any amounts discharged. The Secretary would provide copies of the written decision to the members of the group, the Department official, and the school.

The hearing official's decision would become final as to the merits of the group borrower defense claim and any relief that may be granted within 30 days after the decision is issued and received by the Department official and the school unless, within that 30-day period, the school or the Department official appeals the decision to the Secretary. A decision of the hearing official would not take effect pending the appeal. The Secretary would render a final decision following consideration of any appeal.

After a final decision has been issued, if relief for the group has been denied in full or in part, a borrower may file an individual claim for relief for amounts not discharged in the group process. In addition, the Secretary may reopen a borrower defense application at any time to consider evidence that was not considered in making the previous decision, as discussed above.

The Secretary would collect from the school any amount of relief granted by the Secretary for the borrowers' approved borrower defense. Relief may include discharge of some or all accrued interest, and the loss to the government in those instances will include that discharged interest.

Reasons: The group borrower defense process involving an open school would be structured to provide substantive and procedural due process protections to both the borrowers and the school. By having a Department official present the group's borrower defense claims, the Department seeks to lessen, if not eliminate, the need for borrowers to retain counsel in order to pursue relief and remove potential difficulties that navigating the borrower defense process could present for borrowers. As proposed, schools would have the opportunity to raise arguments and evidence, including any defenses, in the proceeding. Additionally, as discussed under "Borrower Relief (34 CFR 685.222(i) and Appendix A)," the hearing official may also independently request information as described in § 685.222(i)(1).

The open school process would also provide for an appeal to the Secretary of the hearing official's decision, by either the school or the Department official. The proposed regulations would allow individual members of the group to request reconsideration of their individual claims upon the presentation of new evidence in the event the group claim is not successful.

Non-Federal negotiators requested clarification as to whether a hearing official's determination of borrower relief in the open school process would be contingent upon the Department's ability to recover its losses from granting such relief from the school. The final decision of the hearing official, or of the Secretary upon appeal, would determine the amount of relief to be awarded, which in turn would determine the amount of losses to the Secretary that the Department can then collect from the school under proposed § 685.222(h)(5). However, while the final decision will include a determination as to a school's liability for the conduct in question, the Department intends that determinations of borrower relief will be independent of, and not contingent upon, determinations of school liability that will lead to the Department's ability to recover the losses it incurs from granting such relief.

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[19] In some instances, the Department may consider a school owned by a corporate parent to be financially responsible based on an evaluation of the consolidated balance sheets of the school, the parent corporation, and affiliated subsidiaries. 34 CFR 668.23(d)(2). If the school is considered to be financially responsible only based on the assets of the consolidated entities, the Department requires the parent corporation to execute the Program Participation Agreement by which the school participates.

Borrower Relief (§ 685.222(i) and Appendix A)

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan.

Current Regulations: Section 685.206(c) states that, in the event of a successful borrower defense claim against repayment, the Secretary would notify the borrower that he or she is relieved of the obligation to repay all or part of the loan and associated costs and fees, and also affords the borrower further appropriate relief. This further relief may include, but is not limited to, reimbursement for amounts paid toward the loan voluntarily or through enforced collection, a determination that the borrower is not in default and is eligible to receive title IV, HEA program aid, and updating reports to consumer reporting agencies.

Proposed Regulations: Proposed § 685.222(i)(1) describes the proposed process by which a borrower's relief would be determined when a borrower defense claim is approved under the procedures in § 685.222(e), (g), or (h). The Department official or—for group claims, the hearing official—charged with adjudicating the claim would determine the appropriate method for calculating, and amount of, relief arising out of the facts underlying the borrower's claim, based upon the information gathered by, or presented to and considered by, the official. The amount of relief may include a discharge of all amounts owed to the Secretary on the loan at issue and may include the recovery of amounts previously collected by the Secretary on the loan, or some lesser amount. The official would consider the availability of information required for a method of calculation and could use one or more of the methods described in Appendix A to the proposed regulations, or some other method determined by the official. For group claims, the official could consider information from a sample of borrowers in the group.

The designated Department official would notify the borrower of the relief determination and the potential for tax implications and would provide the borrower an opportunity to opt out of group relief, if applicable.

Consistent with the determination of relief, the Secretary would discharge the borrower's obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay and, if applicable, would reimburse the borrower for amounts paid to the Secretary toward the loan voluntarily or through enforced collection.[20]

The Secretary or the hearing official, as applicable, would afford the borrower such further relief as the Secretary or the hearing official determines is appropriate under the circumstances. That relief would include, but not be limited to, determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the HEA, and updating reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan.

The total amount of the relief granted with respect to a borrower defense cannot exceed the amount of the loan and any associated costs and fees, and would be reduced by the amount of any refund, reimbursement, indemnification, restitution, compensatory damages, settlement, debt forgiveness, discharge, cancellation, compromise, or any other benefit received by, or on behalf of, the borrower that was related to the borrower defense. The relief to the borrower may not include non-pecuniary damages such as inconvenience, aggravation, emotional distress, or punitive damages.

Appendix A describes some of the methods the Secretary could employ to calculate relief if the requested relief for a borrower defense is approved in full or in part. The amount of relief may include a cancellation of the outstanding balance on the loan at issue, or some lesser amount, and may include the recovery of amounts previously collected by the Secretary on the portion of the loan determined to be not enforceable against the borrower as a result of the borrower's claim, taking into account any limiting factors such as applicable limitation periods or statutes of limitation. The methods described include the following:

- The difference between what the borrower paid and what a reasonable borrower would have paid had the school made an accurate representation as to the issue that was the subject of the substantial misrepresentation underlying the borrower defense claim;
- The difference between the amount of financial charges the borrower could have reasonably believed the school was charging, and the actual amount of financial charges made by the school, for claims regarding the cost of a borrower's program of study; and
- The total amount of the borrower's economic loss, less the value of the benefit, if any, of the education obtained by the borrower. Economic loss, for the purposes of this section, may be no greater than the amount of the cost of attendance. The value of the benefit of the education may include transferable credits obtained by the borrower,, and, for gainful employment programs, qualifying placement in an occupation within the Standard Occupational Classification (SOC) code for which the training was provided, provided that the borrower's earnings meet the expected salary for the program's designated occupation(s) or field, as determined using an earnings benchmark for that occupation. The Department official or hearing official will consider any evidence indicating that no identifiable benefit of the education was received by the student.

The Secretary may also calculate the borrower's relief on the basis of such other measures as the Secretary may determine.

Reasons: The proposed regulations provide for the determination of relief commensurate with the borrower's injury stemming from the act or omission of the school asserted in the borrower defense claim. While some borrower defenses may merit a discharge of the full amount of the Direct Loan, other claimants may prove an injury in an amount less than that full amount. After considering relevant facts and data, the Department official or the hearing official, as applicable, would determine an amount of relief that is fair to the borrower. This approach would compensate borrowers fairly for the harm they suffered while protecting the fiscal interests of the Federal government.

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[20] Reimbursement includes only the actual gross amount paid, including any amount used to defray collection costs, but does not include interest on the amount paid.

"Under the long-standing 'no-interest rule,' sovereign immunity shields the U.S. government from interest charges for which it would otherwise be liable, unless it explicitly waives that immunity[.]" *Sandstrom* v. *Principi,* 358 F.3d 1376, 1379 (Fed. Cir. 2004).

DMS Imaging, Inc. v. *United States,* 123 Fed. Cl. 645, 660 (2015). There is no waiver of that immunity in the HEA.

Proposed § 685.222(i)(5) would provide that the relief provided to a borrower under § 685.206(c) or § 685.222 may not exceed the amount of the Direct Loan and associated costs and fees. The Department's ability to provide relief for borrowers is predicated upon the existence of the borrower's Direct Loan, and the Department's ability to provide relief for a borrower on a Direct Loan is limited to the extent of the Department's authority to take action on such a loan. Section 455(h) of the HEA, 20 U.S.C. 1087e(h), gives the Department the authority to allow borrowers to assert "a defense to repayment of a [Direct Loan]," and discharge outstanding amounts to be repaid on the loan. However, section 455(h) also provides that "in no event may a borrower recover from the Secretary . . . an amount in excess of the amount the borrower has repaid on such loan." As a result, the Department may not reimburse a borrower for amounts in excess of the payments that the borrower has made on the loan to the Secretary as the holder of the Direct Loan. Additionally, proposed § 685.222(i)(5) would reduce a borrower's amount of relief from the borrower defense process by any amounts that the borrower obtained pursuant to such other sources for reasons discussed under "Process for Individual Borrowers (34 CFR 685.222(e))." The rule is intended to prevent a double recovery for the same injury at the expense of the taxpayer. Because the borrower defense process relates to the borrower's receipt of a Federal loan, we would reduce the amount of a borrower's relief from the borrower defense process by the amount received from such other sources only if the relief from the other sources also relates to the Federal loan that is the subject of the borrower defense.

Additionally, proposed § 685.222(i)(5) would also clarify that a borrower may not receive non-pecuniary damages such as damages for inconvenience, aggravation, emotional distress, or punitive damages. We recognize that, in certain civil lawsuits, plaintiffs may be awarded such damages by a court. However, such damages are not easily calculable and may be highly subjective. The Department believes that excluding non-pecuniary damages from relief under this rule would help produce more consistent and fair results for borrowers.

Subject to these limitations, the Department's proposal would require that the designated Department official, or hearing official, as applicable, determine the appropriate method for calculating the relief to the borrower and the amount of such relief, whether relief to the borrower was approved in full or in part. Determinations on borrower defenses may vary widely, depending on the underlying basis of the claim and circumstances alleged, as well as the level of injury suffered by or detriment to the borrower. For example, for a borrower defense claim brought for a breach of a discrete contractual term such as a school's failure to provide some specific service, the borrower's injury may be more appropriately calculated in consideration of the value of that service and may not warrant a full discharge of the borrower's loan and full reimbursement of payments on the loan made to the Secretary. For example, if the school contractually promised to provide tutoring services, but failed to provide such services, then the borrower would receive the cost of such tutoring services as relief under the proposed method.

We also recognize that the feasibility of any particular method of calculation may be limited due to a lack of available information required for such a method. Information regarding tuition prices among comparable programs in a specific geographic region may not be available or suitable for use in the calculation of relief for an individual borrower's claim, but may in certain circumstances be available and relevant for the calculation of relief for a group of borrowers. To permit the Department official or the hearing official, as applicable, to determine the appropriate method of calculation and to determine relief, the proposed regulations would provide that the official may request information for such purposes. Additionally, the proposed regulations would require the official to consider what information may be feasibly obtained in selecting a method of calculation and in making requests for information.

For determinations of relief for a group of borrowers pursuant to § 685.222(g) and (h), the Department also believes it is appropriate to allow the hearing official to consider evidence from a sample of borrowers from the group. The proposed group claim processes are designed to facilitate the efficient adjudication of borrower defenses with common facts and claims. We believe that allowing a calculation of relief based upon information from a sample of borrowers would facilitate this goal. However, the hearing official would consider in each case the feasibility of using a sample, and the method of determining the sample, in determining the appropriate method for calculating relief.

In proposed § 685.222(i)(1), the Department also cross-references proposed Appendix A to subpart B of part 685, which lists specific methods by which a borrower's relief may be calculated. Appendix A notes that the amount of the borrower's relief may include a discharge of all amounts owed to the Secretary on the loan at issue, or a lesser amount, and may include the recovery of amounts previously collected by the Secretary on the loan. The Department recognizes that the choice and use of any method listed in Appendix A may vary depending on the availability of information and underlying facts and claims for the borrower defense, as noted in paragraph (i)(1), and also notes that the designated Department official or hearing official, as applicable, may use another method that is not listed to calculate relief. However, the Department proposes the methods in Appendix A as possible methodologies for a designated Department official or hearing official, as applicable, to consider in determining calculations for relief.

The first proposed method in Appendix A applies in the case of a substantial misrepresentation and looks to the difference between what was actually paid by a borrower in reliance on a misrepresentation, and what the borrower would have paid if the borrower had been given an accurate understanding of the subject of the substantial misrepresentation. The item at issue in the substantial misrepresentation could include the total cost of attendance at a school, or could pertain to a specific service related to the making of the borrower's Direct Loan or the provision of educational services for which the loan was provided. In some situations, as when the borrower receives education that proves to be worthless, a substantial misrepresentation may warrant full relief, without further analysis. However, in other situations, the Department believes it may be appropriate to determine a borrower's relief by restoring to the borrower the value of what he or she paid for, but did not receive. We believe that such an approach is consistent with the Department's interest in providing relief to borrowers for the harm they suffered while protecting the Federal taxpayer and the interests of the Direct Loan Program.

The second proposed method in Appendix A looks to the difference between the amount of financial charges a borrower reasonably believed that a school was charging, and the actual amount of charges made by the school regarding the cost of a borrower's program of study. For example, if a school misrepresented the amount of a participation fee or the costs of books for a specific class, under this method, the borrower would be entitled to the difference between what the borrower reasonably thought the charges were as represented by the school, and the actual costs of such items. To the extent that a borrower did, for example, participate in such an experience or did receive the books, we believe that such an approach balances the borrower's interest in paying actual costs with the Department's interest in protecting the Federal taxpayer.

The third proposed method in Appendix A is based on the concept that, if circumstances warrant, a borrower may be entitled to receive the total amount of his or her economic loss. Economic loss may not be greater than the borrower's cost of attendance, which is a term defined in section 472 of the HEA, 20 U.S.C. 1087ll. Pursuant to section 472, a borrower may obtain Federal financial aid up to the cost of attendance at a school and may use that aid only for expenses related to attendance, which include costs such as tuition and fees; allowances for books, supplies, transportation, and miscellaneous personal expenses; allowances for room and board; and allowances for dependent care for students with dependents, among others. The Department has stated that it will recognize borrower defenses only if they are directly related to the making of a Direct Loan or to the school's provision of educational services for which the loan was provided. 60 FR 37768, 37769. Section 484(a)(4)(A) of the HEA requires the borrower to commit to use title IV, HEA funds received only to pay expenses incurred to attend the school. By clarifying that a borrower's relief under the proposed method may be no greater than the borrower's cost of attendance at the school, the proposed approach would avoid the difficulty of attempting to track which particular expense the borrower paid with the loan proceeds, as opposed to those paid with grant funds or personal funds. It would do so by including only those costs that Congress considered to be costs that all title IV, HEA applicants would incur and warrant Federal consideration and support. The third proposed method would also note that the relief measured will be reduced by the value of the benefit, if any, of the education. We recognize that under some circumstances, a borrower's education will be deemed to have no value, and thus the borrower's relief would be measured by the borrower's total economic loss, subject to the limit that the borrower's relief can only be approved up to the amount of the borrower's Direct Loan. The proposed method explicitly states that the Department official, or hearing official, will consider any evidence that no benefit was received by the student. However, in other circumstances, we believe it will be appropriate for a designated Department official or hearing official, as applicable, to consider the value provided by the education, as determined by the official. For example, if a borrower obtained transferrable credits, then the borrower can use those credits towards the completion of his or her education at another school, thus reducing his or her cost of attendance at that other institution. However, if transferability of those credits is limited due to the school's accreditation or for other reasons, then the hearing official or designated Department official may consider such factors and assign due value to the credits. Similarly, for gainful employment programs, where the explicit purpose of such programs is to train students for specific vocations, the Department believes it could be appropriate to consider whether the borrower obtained qualifying placement with earnings commensurate with the expected earnings for the occupation or field for which the borrower obtained his or her training. The expected salary would be determined using an earnings benchmark for that occupation. Although the proposed method would note transferable credits and qualifying placement and earnings for gainful employment program borrowers as possible indicators of value, this list is not exhaustive and the hearing official or designated Department official would be permitted to also consider other factors. As with the other proposed methods, we believes this approach balances the interest of the Federal taxpayer with a borrower's interest in paying for only the true cost of his or her education, in light of the act or omission of the school giving rise to the borrower defense.

Non-Federal negotiators requested that the Department create a presumption of full discharge and reimbursement of amounts paid on the loan whenever a borrower defense is approved by the Department. In cases where a Department official is making determinations, under proposed § 685.222(e), such a presumption would shift the burden of disproving loss to the Department. In cases where a group process has been initiated under proposed § 685.222(f)–(h), this burden would be shifted to the school. However, as noted, the Department has a responsibility to protect the interests of Federal taxpayers and such burden shifting is not justified when losses from borrower defenses may be borne by the taxpayer. The Department believes that to balance its interest in protecting the taxpayer with its interest in providing fair outcomes to borrowers, the Department must consider the extent to which claimants actually suffered financial loss when determining relief. In proposing that designated Department officials and hearing officials consider such calculations, however, the Department does not preclude full relief for borrowers; rather, such officials would carefully consider available evidence and make reasoned determinations as to when and whether full relief is justified.

Proposed § 685.222(i)(2) lists certain items the designated Department official or hearing official would include in the notification to the borrower of the relief determination. Given that the Department does not have the authority to determine the tax implications for relief in borrower defenses, which is within the jurisdiction of the Internal Revenue Service, the notice would simply advise the borrower that accepting the relief could affect the borrower's tax obligations. The Department would encourage any borrower who receives relief to seek advice from tax professionals on the tax implications of his or her acceptance of that relief.

Relief granted through the group processes described in proposed § 685.222(f) to (h) may raise specific concerns for members who did not file an application for borrower defense or members who may not have been engaged in the process to their satisfaction. As a result, for determinations of relief for a group of borrowers, the notice would also provide members of the group with an opportunity to opt out of the relief determination. This would provide borrowers in a group process with a second opportunity to opt out of the proceeding, in addition to the opt-out provided by the notice given at the initiation of the group process described in proposed paragraph (f)(2). If a borrower declines to accept the relief determination from the group process, the borrower may choose to have his or her borrower defense considered on an individual basis through the process described in proposed paragraph (e) of this section. As noted earlier, the decision of the hearing official in a group proceeding would likely bear strongly on the resolution of the borrower's claim, if pursued on an individual basis.

Borrower Cooperation and Transfer of Rights (§ 685.222(j) and (k))

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan.

Current Regulations: Current borrower defense regulations (§ 685.206(c)) do not address borrower cooperation or the transfer of rights.

Proposed Regulations: Section 685.222(j) of the proposed regulations would require that a borrower seeking relief through the borrower defense process reasonably cooperate with the Secretary, whether relief is sought through an individual application filed under proposed § 685.222(e) or through the group processes described in proposed § 685.222(f) to (h). The Secretary would be permitted to revoke relief granted to a borrower who does not fulfill this obligation.

In addition, proposed § 685.222(k) would provide that, when the Secretary grants relief in response to a borrower defense claim, the borrower is deemed to have assigned to, and relinquished in favor of, the Secretary any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the contract for educational services for which the loan was received, against the school, its principals, its affiliates, and their successors, its sureties, and any private fund. If the borrower asserts and recovers on a claim with a public fund, and if the Secretary determines that the borrower's recovery from that public fund was based on the same claim raised as a borrower defense and for the same loan for which the discharge was granted, the Secretary may reinstate the borrower's obligation to repay the amount discharged on the loan based on the amount recovered from the public fund.

Proposed § 685.222(k) would apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights. However, § 685.222(k) would not prevent a borrower from pursuing relief against any party named in § 685.222(k) for claims in excess of what has been assigned to the Secretary, or for claims unrelated to the basis of the borrower defense on which the borrower received relief.

Reasons: When a borrower seeks a discharge of a Direct Loan, the Department would require the borrower's cooperation to determine the facts of the claim and provide the school with due process, as appropriate. Absent this cooperation, the Department could be unable to successfully resolve the borrower's request for relief. Similarly, for the reasons discussed for requesting such information on claims to third parties under "Process for Individual Borrowers (34 CFR 685.222(e))," it is important that the Department prevent double recovery for the same claim, when the borrower has already recovered from another source.

Borrower Responsibilities and Defenses (§ 685.206)

Statute: Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan.

Current Regulations: Section 685.206(c) establishes the conditions under which a Direct Loan borrower may assert a borrower defense, the relief afforded by the Secretary in the event the borrower's claim is successful, and the Secretary's authority to recover from the school any loss that results from a successful borrower defense. Specifically, § 685.206(c) provides that a borrower defense may be asserted based upon any act or omission of the school that would give rise to a cause of action against the school under applicable State law. Under § 685.206(c), a borrower defense is presumed to be raised only in response to a proceeding by the Department to collect on a Direct Loan, including, but not limited to, tax refund offset proceedings under 34 CFR 30.33, wage garnishment proceedings under 31 U.S.C. 3720D, salary offset proceedings for Federal employees under 34 CFR part 31, and consumer reporting proceedings under 31 U.S.C. 3711(f). Under § 685.206(c), if a borrower defense is successful, the borrower is relieved of the obligation to pay all or part of the loan and associated costs and fees, and the borrower may be afforded such further relief as the Secretary determines is appropriate, including, among other things, reimbursement of amounts previously paid toward the loan. Although § 685.206(c) permits the Secretary to seek recovery from the school of the amount of the loan to which the borrower defense applies, it also provides that the Secretary may not initiate such a proceeding after the three-year record retention period referenced in § 685.309(c).

Proposed Regulations: Proposed § 685.206(c) would specify that it applies only to borrower defenses asserted with respect to Direct Loans disbursed prior to July 1, 2017. It would clarify that a borrower defense must relate to the making of the Direct Loan or the provision of educational services and define "borrower defense" to include one or both of the following: A defense to repayment of amounts owed to the Secretary on a Direct Loan, in whole or in part; and a right to recover amounts previously collected by the Secretary on the Direct Loan, in whole or in part. Proposed § 685.206(c) would also exclude the language that specifically refers to the Department's defaulted loan collection proceedings.

Rather than specifying the available relief in proposed § 685.206(c) for an approved borrower defense, proposed § 685.206(c)(2) would refer to proposed § 685.222(e)–(k), which would provide procedures for both the assertion and the resolution of a borrower defense claim, including available relief for an approved borrower defense.

Proposed § 685.206(c)(2) also would refer to proposed § 685.222(a) for applicable definitions and to specify the order in which the Department would process multiple loan discharge claims submitted by the same borrower for the same loan or loans. Under proposed § 685.222(a)(6), the Secretary would determine the order in which multiple loan discharge claims submitted by the same borrower for the same loan or loans are processed, and notify the borrower of that order.

Proposed § 685.206(c) would continue to permit the Secretary to initiate a proceeding to recover from the school the amount of relief arising from an approved borrower defense, but it would remove the three-year limitation on the Secretary's ability to initiate such a proceeding.

Reasons: The introduction of a definition of "borrower defense" streamlines the regulations. The proposed updates to § 685.206 provide clarity to borrowers who have loans first disbursed prior to July 1, 2017, and who are seeking relief based on a borrower defense claim. The Department considered whether to change the standard by which a borrower may assert a borrower defense for loans disbursed prior to the anticipated effective date of these regulations, or July 1, 2017. However, the existing Direct Loan promissory notes incorporate the current borrower defense to repayment process for loans first disbursed before July 1, 2017, which is based on an act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law. As a result, the Department has decided to keep the current standard for loans first disbursed prior to July 1, 2017. Acts or omissions that may give rise to a cause of action under applicable State law may include any cause of action pertaining to the making of the Direct Loan or the provision of educational services for which the loan was provided. Similarly, other applicable State law principles governing the State law cause of action would apply, such as any applicable State law statutes of limitation.

We discuss under "Borrower Defenses—General (§ 685.222(a))" the Department's reasons for clarifying that the Department will acknowledge a borrower defense asserted under the regulations "only if the cause of action directly relates to the loan or to the school's provision of educational services for which the loan was provided." 60 FR 37768, 37769. We also discuss the reasons for the proposed definition of "borrower defense" in that part of this NPRM.

Proposed § 685.206(c) would exclude the language that specifically refers to the Department's defaulted loan collection proceedings. While many loans that are the subject of a borrower defense may be in default, the Department has committed in this proposed rulemaking to establish a process outside of the defaulted loan collection proceedings to evaluate borrower defenses for loans regardless of whether the loans are in default or not. We believe that establishing such a dedicated process will enhance the Department's efforts to review and process borrower defenses and offer borrowers more consistent and focused relief.

We also propose to amend § 685.206 to refer to a new section of the regulations, § 685.222, for the process to be followed when pursuing a borrower defense claim. Proposed § 685.222 would provide an expanded description of the regulatory framework for the range of borrower defense claims, including the process by which claims and relief are determined.

Proposed § 685.206(c)(2) would refer to proposed § 685.222(a)(6), which addresses the order in which multiple claims for loan discharge from the same borrower for the same loan or loans will be processed by the Secretary. The proposed language indicates that, if the borrower asserts both a borrower defense and any other objection to an action of the Secretary with regard to that Direct Loan, the Secretary notifies the borrower of the order in which the borrower defense and any other objections will be considered. During the negotiated rulemaking process, a non-Federal negotiator requested that further clarification be provided regarding the order in which claims will be determined. The Department did not agree that it was appropriate to do so within the proposed regulations, since the particular circumstances may vary and establishing one order for all cases could result in a progression that could be unfair to individual borrowers. In general, we will evaluate claims in the order that is likely to result in a decision for the borrower sooner, while also effectively and efficiently using the Department's resources.

While a borrower may still assert a borrower defense in connection with the Department's defaulted loan collection proceedings, the Department's current experience with borrower defense claims from Corinthian students suggests that such claims are more likely to arise outside of such proceedings. However, it is not clear whether this will be true in the future.

The existing Direct Loan promissory notes incorporate the current borrower defense to repayment process for loans first disbursed before July 1, 2017, which is based on an act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law. Because current regulations in § 685.206(c) do not include a process for submission and consideration of claims, the Department intends to extend to borrowers with loans first disbursed before July 1, 2017, the processes developed to submit, review, and resolve borrower defense claims for borrowers with loans first disbursed on or after July 1, 2017.

The Department is also proposing to remove the limitation period on the Department's ability to initiate a proceeding to recover losses from approved borrower defenses. We explain the reasons for this proposed change under the discussion for § 685.206 and § 685.308, "Remedial Action and Recovery from the Institution."

150 Percent Direct Subsidized Loan Limit (§ 685.200)

Statute: Section 455(q) of the HEA provides that a first-time borrower on or after July 1, 2013, is not eligible for additional Direct Subsidized Loans if the borrower has received Direct Subsidized Loans for a period that is equal to or greater than 150 percent of the length of the borrower's current program of study (thereinafter referred to as the "150 percent limit"). In addition, some borrowers who are not eligible for Direct Subsidized Loans because of the 150 percent limit become responsible for the interest that accrues on their loans when it would otherwise be paid by the government. The statute does not address what effect a discharge of a Direct Subsidized Loan has on the 150 percent limit. The statute also does not address whose responsibility it is to pay the outstanding interest on any remaining loans that have not been discharged, but have previously lost eligibility for interest subsidy.

Current Regulations: Section 685.200(f)(4) provides two exceptions to the calculation of the period of time that counts against a borrower's 150 percent limit—the subsidized usage period—that can apply based on the borrower's enrollment status or loan amount. The regulations do not have an exception to the calculation of a subsidized usage period if the borrower receives a discharge of his or her Direct Subsidized Loan. They also do not address whose responsibility it is to pay the outstanding interest on any remaining loans that have not been discharged, but have previously lost eligibility for the interest subsidy based on the borrower's remaining eligibility period and enrollment.

Proposed Regulations: Proposed § 685.200(f)(4)(iii) would specify that a discharge based on school closure, false certification, unpaid refund, or defense to repayment will lead to the elimination of or recalculation of the subsidized usage period that is associated with the loan or loans discharged.

The proposed regulations would also specify that, when the complete amount of a Direct Subsidized Loan or a portion of a Direct Subsidized Loan is discharged, the entire subsidized usage period associated with that loan is eliminated. In the event that a borrower receives a closed school, false certification, or, depending on the circumstances, defense to repayment or unpaid refund discharge, the Department would completely discharge a Direct Subsidized Loan or a portion of a Direct Subsidized Consolidation Loan that is a attributable to a Direct Subsidized Loan.

The proposed regulations would also specify that, when only a portion of a Direct Subsidized Loan or a portion of a Direct Consolidation Loan that is attributable to a Direct Subsidized Loan is discharged, the subsidized usage period is recalculated instead of eliminated. Depending on the circumstances, discharges due to defense to repayment and unpaid refund could result in only part of a Direct Subsidized Loan or a portion of a Direct Consolidation Loan that is attributable to a Direct Subsidized Loan being discharged.

The proposed regulations would specify that when a subsidized usage period is recalculated instead of eliminated, the period is only recalculated when the borrower's subsidized usage period was calculated as one year as a result of receiving the Direct Subsidized Loan in the amount of the annual loan limit for a period of less than an academic year. For example, if a borrower received a Direct Subsidized Loan in the amount of $3,500 as a first-year student and on a full-time basis for a single semester of a two-semester academic year, the subsidized usage period would be one year. If the borrower later receives an unpaid refund discharge in the amount of $1,000, the subsidized usage period would be recalculated, and the subsidized usage period would become 0.5 years because the subsidized usage period was previously based on the amount of the loan and, after the discharge, is based on the relationship between the period for which the borrower received the loan (the loan period) and the academic year for which the borrower received the loan.

In contrast, if the borrower received a Direct Subsidized Loan in the amount of $3,500 as a first-year student and on a full-time basis for a full two-semester academic year, the subsidized usage period would be one year. If the borrower later receives an unpaid refund discharge in the amount of $1,000, the subsidized usage period would still be one year because the subsidized usage period would still be calculated based on the relationship between the loan period and the academic year for which the borrower received the loan.

Proposed § 685.200(f)(3) would provide that, if a borrower receives a discharge based on school closure, false certification, unpaid refund, or defense to repayment that results in a remaining eligibility period greater than zero, the borrower is no longer responsible for the interest that accrues on a Direct Subsidized Loan or on the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan, unless the borrower once again becomes responsible for the interest that accrues on a previously received Direct Subsidized Loan or on the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan, for the life of the loan.

For example, suppose a borrower receives three years' worth of Direct Subsidized Loans at school A and then transfers to school B and receives three additional years' worth of Direct Subsidized Loans. Further suppose that at this point, the borrower has no remaining eligibility period and enrolls in an additional year of academic study at school B, which triggers the loss of interest subsidy on all Direct Subsidized Loans received at schools A and B. If the borrower later receives a false certification discharge with respect to school B, the borrower's remaining eligibility period is now greater than zero. The borrower is no longer responsible for paying the interest subsidy lost on the three loans from school A. If the borrower then enrolled in school C and received three additional years of Direct Subsidized Loans, resulting in a remaining eligibility period of zero, and then enrolled in an additional year of academic study, the borrower would lose the interest subsidy on the Direct Subsidized Loans received at schools A and C.

Reasons: The proposed regulations would codify the Department's current practice in this area and would provide clarity in the Department's policies and practices. Under the circumstances in which a borrower receives a closed school, false certification, defense to repayment, or unpaid refund discharge, a borrower has not received all or part of the benefit of the loan due to an act or omission of the school. In such event, we believe that a student's eligibility for future loans and the interest subsidy on existing loans should not be negatively affected by having received all or a portion of such loan. Accordingly, under the proposed regulations, we would increase the borrower's eligibility for Direct Subsidized Loans or reinstate interest subsidy on other Direct Subsidized Loans under the 150 percent limit where the borrower receives a discharge of a Direct Subsidized Loan and the discharge was based on an act or an omission of the school that caused the borrower to not receive all or part of the benefit of the loan.

Administrative Forbearance (§ 685.205(b)(6))

Statute: Section 428(c)(3) of the HEA provides for the Secretary to permit FFEL Program lenders to exercise administrative forbearances that do not require the agreement of the borrower, under conditions authorized by the Secretary. Section 455(a) provides that Direct Loans have the same terms, conditions, and benefits as FFEL Loans.

Current Regulations: Section 685.205(b) of the current regulations describes the circumstances under which the Secretary may grant forbearance on a Direct Loan without requiring documentation from the borrower. Section 685.205(b)(6) specifies that these circumstances include periods necessary for the Secretary to determine the borrower's eligibility for a closed school discharge, a false certification of student eligibility discharge, an unauthorized payment discharge, an unpaid refund discharge, a bankruptcy discharge, and teacher loan forgiveness.

Proposed Regulations: We propose to add to § 685.205(b)(6) a mandatory administrative forbearance when the Secretary is in receipt of, and is making a determination on, a discharge request based on a claimed borrower defense. The proposed changes would add cross-references to the regulations on borrower defense claims (§§ 685.206(c) and 685.222). By these references, we would expand the circumstances under which the Secretary may grant forbearance on a Direct Loan without requiring documentation from the borrower.

Reasons: During the Department's review of a borrower defense, we believe borrowers seeking relief should have the option to continue to make payments on their loans, as well as the option to have their loans placed in forbearance. Providing an automatic forbearance with an option for the borrower to decline the temporary forbearance and continue making payments would reduce the potential burden on borrowers pursuing borrower defenses.

Mandatory Administrative Forbearance for FFEL Program Borrowers (§ 682.211)

Statute: Section 428(c)(3)(D) of the HEA provides for the Secretary to permit lenders to provide borrowers with certain administrative forbearances that do not require the agreement of the borrower, under conditions authorized by the Secretary.

Current Regulations: Section 682.211(i) specifies the circumstances under which a FFEL lender must grant a mandatory administrative forbearance to a borrower. The current regulations do not address circumstances in which a borrower has asserted a borrower defense with respect to a loan.

Proposed Regulations: Proposed § 682.211(i)(7) would require a lender to grant a mandatory administrative forbearance to a borrower upon being notified by the Secretary that the borrower has submitted an application for a borrower defense discharge related to a FFEL Loan that the borrower intends to pay off through a Direct Loan Program Consolidation Loan for the purpose of obtaining relief, as reflected in proposed § 685.212(k). The administrative forbearance would remain in effect until the Secretary notifies the lender that a determination has been made as to the borrower's eligibility for a borrower defense discharge. If the Secretary notifies the borrower that he or she would qualify for a borrower defense discharge if he or she were to consolidate, the borrower would then be able to consolidate the loan(s) to which the defense applies. If the borrower then obtains the Direct Consolidation Loan, the Secretary would recognize the defense and discharge that portion of the Consolidation Loan that paid off the FFEL Loan in question.

Reasons: We are proposing to change the Direct Loan forbearance regulations in § 685.205(b)(6) to provide for the Secretary to grant an administrative forbearance to a Direct Loan borrower during the period when the Secretary is determining the borrower's eligibility for a borrower defense discharge. Some non-Federal negotiators believed that a comparable forbearance benefit should be provided to FFEL Program borrowers who believe that they have a defense to repayment on a FFEL Loan and intend to seek relief under the Direct Loan borrower defense provisions by consolidating the FFEL Loan into a Direct Consolidation Loan, as addressed in proposed § 685.212(k). As described more fully below regarding proposed § 685.212, that section will be amended to address how a Direct Consolidation Loan borrower may assert a defense to repayment of that Consolidation Loan based on an act or omission of a school the borrower attended using the Direct Loan, FFEL Stafford or PLUS Loan, or a Perkins Loan paid off by that Consolidation Loan. If the borrower defense claim is approved in full, for example, the Secretary would discharge the portion of the Direct Consolidation Loan that paid off the Direct Loan, FFEL Loan, or Perkins Loan. Non-Federal negotiators requested that the mandatory administrative forbearance provisions for FFEL Program borrowers who are seeking relief based on a borrower defense claim be amended to mirror the mandatory administrative forbearance provisions for Direct Loan borrowers who are seeking relief under borrower defense. The Department agreed that this was appropriate and proposes to revise § 682.211 to provide this benefit.

Discharge of a Loan Obligation (§ 685.212)

Statute: Section 455(h) of the HEA provides that the Secretary may specify in regulations which acts or omissions of a school a borrower may assert as a defense to repayment of a Direct Loan. This provision allows for the discharge of the borrower's Direct Loan pursuant to the regulations regarding borrowers' defenses to repayment.

Current Regulations: Current § 685.212 states those grounds specified or explicitly referenced in sections 437 and 455(m) of the HEA, and section 6 of Public Law 109–382 (authorizing September 11 survivors discharge), on which the Secretary discharges some or all of a borrower's obligation to repay a Direct Loan. These grounds include death, disability, closed school, false certification, bankruptcy, teacher loan forgiveness, public service loan forgiveness, and September 11 survivors discharge.

Proposed Regulations: We propose to amend § 685.212 to include discharge of all or part of a borrower's Direct Loan obligation by reason of a borrower defense that has been approved under § 685.206(c) or proposed § 685.222. The proposed addition would also specify that, with respect to a Direct Consolidation Loan for which a borrower defense was approved, the Secretary would provide relief as to the portion of the Consolidation Loan obligation that repaid the original Direct Loan, FFEL Loan, Perkins Loan or other federally financed student loan used to attend the school to which the borrower defense claim relates. The proposed addition would further describe the standard we would apply to consideration of borrower defense claims raised by borrowers to Direct Consolidation Loans and to claims for return of payments and recoveries on the Consolidation Loan itself, and to payments and recoveries on the Federally-financed loans that were paid off by the Direct Consolidation Loan.

Reasons: The proposed changes to § 685.206(c) and proposed new § 685.222 include new language establishing the grounds on which a borrower's obligation to repay a Direct Loan may be discharged. This proposed change to § 685.212 would clarify current policy and provide for a more complete set of cross-references to the loan discharge types covered in § 685.212.

The proposed changes would also clarify that an appropriate portion of a borrower's obligation to repay a Direct Consolidation Loan may be discharged, if a borrower defense has been approved pursuant to § 685.206(c) or proposed § 685.222. Section 455(h) of the HEA provides that the Secretary may allow for the discharge of a loan pursuant to a borrower defense for a loan made "under this part"—the Direct Loan Program. This includes Direct Consolidation Loans made under section 455(g) of the HEA. This proposed change to § 685.212 is also meant to clarify current policy regarding the types of loans for which a borrower defense may be asserted, and how a borrower's obligation to repay a Direct Consolidation Loan is affected if a borrower defense claim has been approved under § 685.206(c) and proposed § 685.222. Because the act or omission of the school that would constitute a borrower defense under § 685.206(c) or proposed § 685.222 would pertain to the making of the Federal loans that were consolidated into his or her Direct Consolidation Loan or the provision of educational services for such Federal loans, the proposed language would clarify that relief for a borrower defense approved as to a Direct Consolidation Loan will be provided for that portion of the Consolidation Loan that corresponds to the original loan obtained to attend the school whose act or omission gave rise to a borrower defense. Thus, § 685.212 would be amended in new paragraph (k) to list the Federal education loans that may be paid off by a Direct Consolidation Loan and with regard to which the borrower may assert a borrower defense claim. Those original loans include the loans listed in § 685.220. For some of the discharges already listed in this section, the relief available is explained here; for others, the relief is described only in the specific regulations that describe the grounds and procedure for obtaining relief. Some of the discharges already listed provide only relief from the obligation to repay the remaining outstanding balance on the loan, while others, such as closed school discharges, may provide for both debt relief and refund of payments already recovered. The relief available for each of the listed discharges is controlled by the law on which the discharge is based; the basis and relief available for borrower defense discharges are stated fully in § 685.206(c) and proposed § 685.222 and will be reflected in the new § 685.212(k).

Thus, § 685.212 would be amended to clarify that the Secretary would evaluate a borrower defense claim on a Direct Loan using the standards stated in § 685.206(c) or, for loans first disbursed, or made, on or after July 1, 2017, in

§ 685.222. The standard that would be applied would depend upon factors such as the date that the Direct Consolidation Loan was first made; whether the underlying loan to which a borrower defense is asserted is a Direct Loan or some other eligible loan for consolidation; and whether the issue at hand refers either to a borrower's defense to repayment to the applicable portion of a Direct Consolidation Loan that may be attributable to the underlying loan to which a borrower defense is being asserted, or refers to the borrower's request for a return of payments collected by the Secretary on the underlying loan.

Direct Loans Paid Off by Direct Consolidation Loans

Applicable Standard

For Direct Loans for which borrowers may be considering consolidation, the standards would differ depending on the date on which the first Direct Loan to which a claim is asserted was made. If the Direct Loan Consolidation borrower asserts a claim regarding an underlying Direct Subsidized, Unsubsidized, or PLUS Loan made before July 1, 2017, we would apply the standard in § 685.206(c). For underlying Direct Loans made after July 1, 2017, we would apply the standard stated in § 685.222(b), (c), or (d) to the borrower's defenses to repayment, as we would if the borrower had challenged those loans directly through the borrower defense process.

Return of Payments

For underlying Direct Loans made before July 1, 2017, we would apply applicable state law as to the limitations period pursuant to § 685.206(c), to any claim for return of payments made or recovered on the underlying loans or on that portion of the Direct Consolidation Loan attributable to the paying off of the underlying Direct Loan.

For underlying Direct Loans made on or after July 1, 2017, we would apply the limitations period in § 685.222(b), (c), or (d), as applicable, to any claim for return of payments made or recovered on the underlying loans or on that portion of the Direct Consolidation Loan attributable to the paying off of the underlying Direct Loan.

Other Eligible Loans Paid Off by Direct Consolidation Loans

Applicable Standard

For other education loans paid off by the Direct Consolidation Loan, such as FFEL, Perkins, or other eligible loans for consolidation that are not Direct Loans, the standard that will apply to a defense to repayment of an applicable portion of the outstanding balance of borrowers' Direct Consolidation Loans would depend upon the date that the Direct Consolidation Loan was made. For such defense to repayment claims raised by Direct Consolidation Loan borrowers with regard to other education loans paid off by a Direct Consolidation Loan that was made before July 1, 2017, we would evaluate the defense to repayment with respect to the underlying loan under the Direct Loan defense standard in § 685.206(c), as if the challenged loan were a Direct Loan. For such a Direct Consolidation Loan made on or after July 1, 2017, we would evaluate the borrower's defense to repayment with respect to the underlying loan under the Direct Loan borrower defense standard in proposed § 685.222.

Return of Payments

However, for claims for return of payments made or recovered on the underlying loan, we would return only payments made or recovered by the Department directly, and only if the borrower proved that the loan or portion of the loan to which the payment was credited was not legally enforceable under the law governing the claims on the underlying, paid off loans. If the borrower seeks recovery of a payment made on the Direct Consolidation Loan itself, as distinct from payments made on the underlying paid-off loan, the applicable standard governing claims for return of payments would be that provided in § 685.206(c) (for Direct Consolidation Loans made before July 1, 2017) or § 685.222(b), (c), or (d) (for Direct Consolidation Loans made on or after July 1, 2017). Similarly, depending on the date that the Direct Consolidation Loan was made, the limitation periods applicable to claims for return of payments made on the Direct Consolidation Loan would be those stated in either § 685.206(c) or § 685.222(b), (c), or (d), accordingly.

In addition, the proposed amendment to § 685.212 would not allow a borrower to assert a borrower defense more than once for a claim that is based on the same underlying circumstances and same evidence, unless allowed under the procedures in proposed § 685.222. For instance, if a borrower asserted a borrower defense with respect to a loan under either § 685.206(c) or proposed § 685.222 that was denied in full or in part, the borrower may not then assert a borrower defense with respect to that original loan after consolidation, absent new evidence as described in proposed § 685.222(e)(5) or a reopening of an application for borrower defense by the Secretary under that section.

Remedial Action and Recovery From the Institution

General (§§ 685.206, 685.308)

Statute: Section 454(a) of the HEA provides that the Secretary may include in Direct Loan participation agreements with institutions provisions that are necessary to protect the interests of the United States and to promote the purposes of the Direct Loan Program, and that the institution accepts responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement.

Current Regulations: The current regulations provide, in § 685.206(c), that the Secretary may initiate an action to recover from a school whose act or omission resulted in an approved borrower defense the amount of loss incurred by the Department for that claim, but may not do so after the end of the record retention period provided under § 685.309(c), which is three years after the end of the award year in which the student last attended the institution. See § 685.309, which references § 668.24.

In addition, current § 685.308 provides that the Secretary may take various actions to recover for losses caused by institutions, and describes the procedures that would be used for some claims.

Proposed Regulations: We propose to remove from § 685.206 the provision stating that the Secretary would not initiate action to recover after the end of the three-year record retention period. We further propose to revise § 685.308 to more accurately describe the instances in which the Secretary incurs a loss for which the institution is accountable.

Reasons: We propose to remove the limitation on bringing actions against an institution to recover for losses incurred from borrower defenses for two reasons. First, the current three-year limitation in § 685.206(c)(3) cites § 685.309(c), which refers to § 668.24, the general record retention requirements for the title IV, HEA student financial assistance programs. Section 668.24(e)(2) provides that the institution is to keep records of borrower eligibility and other records of its "participation" in the Direct Loan Program for three years after the last award year in which the student attended the institution. The requirement pertains to the retention of "program records"—records of the determination of eligibility for Federal student financial assistance and management of Federal funds provided to the institution for those awards. §§ 668.24(a), 685.309.[21] The Department believes that these records will rarely, if ever, be needed to address borrower defense claims. Borrower defense claims will turn on other evidence—advertising, catalogs, enrollment contracts, recruiting scripts—that have not been and cannot be categorized as "program records." Moreover, institutions have always faced potential litigation on claims that would also constitute borrower defense claims, and have already made business judgments as to the need and period for which to retain business records that may be relevant in such litigation. The proposed change would do no more than hold the school to the same risk it has already assessed and for which it has exercised its business judgment to protect itself. As noted under "Federal Standard and Limitation Periods (34 CFR 685.222(b), (c), and (d) and 34 CFR 668.71)," State laws and the new proposed Federal standard generally provide that the limitation period for affirmative claims for recovery based on misrepresentation begins only upon the claimant's discovery of the facts that give notice that the representation was false, and thus an institution would already be expected to have accounted for that potential in adopting its own record retention policies. We are not, however, proposing to impose any new requirements relating to record retention. Moreover, borrowers—whether a designated Department official assists in developing the evidence for the borrower under proposed § 685.222 or not—always bear the burden of proof, either initially or ultimately.[22] The institution thus faces potential risk where a borrower belatedly asserts a borrower defense only if the borrower—or the Department, for claims considered as a group, asserts a claim pertaining to the borrower—meets that burden by producing credible evidence of the facts on which the claim is based.

Second, the most readily available tool for recovery of Federal claims has always been administrative offset, which Federal law encourages and even requires agencies to use. 31 U.S.C. 3716. That authority was amended in 2008 to remove its previous 10-year limitation period.[23] Case law makes clear that limitations periods adopted by a legislative authority can be changed or abrogated, and the new limitation period applied even to claims that may have been barred under the prior rule.[24] Because the limitation period in current § 685.206(c)(3) is solely a regulatory limitation adopted by the Department pursuant to its regulatory authority and was in no way compelled by statute, the Department can change or remove that limitation and can apply the revised rule to any claim, without regard to when that claim arose. This would not produce an unfair result. As noted in the background discussion under "Borrower Defenses (34 CFR 668.71, 685.205, 685.206, and 685.222)," the borrower defense provision in § 685.206(c) has been infrequently utilized from 1995 until the recent Corinthian experience, and there is no reason to believe that any institution would have relied on the three-year limitation period in current § 685.206(c)(3) to discard business records that it would otherwise have retained.

We propose to revise § 685.308 to more accurately describe the grounds on which an institution can cause loss for which the Secretary holds the school accountable, and the procedures used to establish and enforce that liability in some particular circumstances. An institution participates in the title IV, HEA programs only by entering into a program participation agreement. Under that agreement, the institution accepts responsibility to act as a fiduciary in handling, awarding, and accounting for title IV, HEA funds that it awards, and is liable for the costs of funds it fails to account for, or funds it awards or causes to be awarded improperly.[25] An institution participates in the Direct Loan Program only by entering into a Direct Loan program participation agreement.[26] Under that agreement, the institution agrees to "originate" Direct Loans that are made by the Department, and to accept financial liability for losses "stemming from" its failure to perform its functions under that agreement. The institution breaches its fiduciary duty as originator of Direct Loans when it causes a loan to be made to an individual who was ineligible to receive that loan, or causes an eligible individual to receive a loan in an ineligible amount, or by its act or omission causes the Secretary to incur an obligation to discharge a loan or to be unable to enforce the loan.

We propose to revise § 685.308 to more accurately describe the range of these circumstances. In some instances, the Secretary identifies possible claims for Department losses for which the Secretary holds the school accountable in audits and program reviews, and if such claims are asserted in the final determinations that ensue from these audits or program reviews, the institution may contest the claims under the procedures in subpart H of part 668. In other instances, the Secretary asserts these claims in other contexts, and may follow other procedures to claim recovery. In any such other procedure, Federal law and Department regulations require the Secretary to provide the institution notice and an opportunity to dispute the claim and obtain a hearing on its objections. See 34 CFR 34.20 *et seq.* For borrower defense claims, we describe briefly in proposed § 685.222 the procedures we propose to use for these claims and intend to prescribe them in more detail in the future.

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[21] The record retention regulation was adopted pursuant to 20 U.S.C. 1232f, which requires each recipient of Federal funds under a Department program to keep records that disclose "the amount and disposition of those funds," and to "maintain such records for three years after the completion of the activity for which the funds are used."

[22] The rebuttable presumption applicable to group claims shifts the burden of rebuttal to the school; if the school submits evidence to rebut that presumption, the burden of proof then, and only then, shifts back to the borrower.

[23] "Notwithstanding any other provision of law, regulation, or administrative limitation, no limitation on the period within which an offset may be initiated or taken pursuant to this section [§ 3716] shall be effective." 31 U.S.C. 3716(e)(1).

[24] *In re Lewis,* 506 F.3d 927, 932 (9th Cir. 2007); *U.S.* v. *Distefano,* 279 F.3d 1241, 1244 (10th Cir. 2002) (noting that "the Supreme Court has upheld, against due process challenges, statutes reviving such barred claims. See *Chase Sec. Corp.* v. *Donaldson,* 325 U.S. 304, 311–14, 65 S.Ct. 1137, 89 L.Ed. 1628 (1945); *Campbell* v. *Holt,* 115 U.S. 620, 628, 6 S.Ct. 209, 29 L.Ed. 483 (1885). As have we. See *Bernstein* v. *Sullivan,* 914 F.2d 1395, 1400–03 (10th Cir. 1990).").

[25] See, *e.g., Nat'l Career Coll., Inc.* v. *Spellings,* 371 F. App'x 794, 796 (9th Cir. 2010) (college has fiduciary duties in handling the public's money. 34 CFR 668.15, 668.16, 668.82); *Sistema Universitario Ana G. Mendez* v. *Riley,* 234 F.3d 772, 775 (1st Cir. 2000) (As a result of fiduciary status, institutions bear burden of proving that their expenditures of title IV funds were warranted and that they complied with program requirements); *St. Louis Univ.* v. *Duncan,* 97 F. Supp. 3d 1106, 1109 (E.D. Mo. 2015) (institution acts as fiduciary and is liable for improperly awarded funds); *Maxwell* v. *New York Univ.,* No. 08 CV 3583 (HB), 2009 WL 1576295, at *7 (S.D.N.Y. June 1, 2009), *aff'd,* 407 F. App'x 524 (2d Cir. 2010) (school acts as a fiduciary for the Department); *Instituto De Educ. Universal, Inc.* v. *U.S. Dep't of Educ.,* 341 F. Supp. 2d 74, 82 (D.P.R. 2004), *aff'd sub nom. Ruiz-Rivera* v. *U.S. Dep't of Educ.,* No. 05–1775, 2006 WL 1343431 (1st Cir. May 10, 2006), and *subsequently aff'd sub nom. Instituto de Educacion Universal* v. *U.S. Dep't of Educ.*, No. 06–1562, 2007 WL 1519059 (1st Cir. May 11, 2007) (Under HEA, an educational institution operates as a fiduciary to the Department, and is subject to the highest standard of care and diligence in administering these programs and accounting to the Department for the funds it receives. 34 CFR 668.82(a), (b) (1991–94)); *see also Chauffeur's Training Sch., Inc.* v. *Riley,* 967 F. Supp. 719, 727 (N.D.N.Y. 1997) (institution liable under breach of contract for costs of payments the Department made to third parties on account of loans the institution improperly caused to be made).

[26] This Direct Loan Program Participation Agreement is now included in, and a separate part of, the general program participation agreement required by section 487(a) of the HEA.

We also propose to remove the reference to a remedial action (requiring schools to purchase loans) that was sanctioned under FFEL regulations in effect when this section was adopted in 1995, but which has not and will not be used for Direct Loans.

Severability (§ 685.223)

Statute: Section 454(a) of the HEA provides that the Secretary may include in Direct Loan participation agreements with institutions provisions that are necessary to protect the interests of the United States and to promote the purposes of the Direct Loan Program; 20 U.S.C. 3474 authorizes the Secretary to adopt such regulations as needed for the proper administration of programs.

Current Regulations: None.

Proposed Regulations: Proposed § 685.223 would make clear that, if any part of the proposed regulations for part 685, subpart B, whether an individual section or language within a section, is held invalid by a court, the remainder would still be in effect.

Reasons: We believe that each of the proposed provisions discussed in this preamble would serve one or more important, related, but distinct, purposes. Each provision would provide a distinct value to students, prospective students, and their families, the public, taxpayers, the Federal government, and institutions separate from, and in addition to, the value provided by the other provisions. To best serve these purposes, we propose to include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Institutional Accountability

Financial Responsibility

General (§ 668.171)

Statute: Section 487(c)(1) authorizes the Secretary to establish reasonable standards of financial responsibility. Section 498(a) of the HEA provides that, for purposes of qualifying an institution to participate in the title IV, HEA programs, the Secretary must determine the legal authority of the institution to operate within a State, its accreditation status, and its administrative capability and financial responsibility.

Section 498(c)(1) of the HEA authorizes the Secretary to establish ratios and other criteria for determining whether an institution has the financial responsibility required to (1) provide the services described in its official publications, (2) provide the administrative resources necessary to comply with title IV, HEA requirements, and (3) meet all of its financial obligations, including but not limited to refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred for programs administered by the Secretary.

Current Regulations: The current regulations in § 668.171(a) mirror the statutory requirements that to begin and continue to participate in the title IV, HEA programs, an institution must demonstrate that it is financially responsible. The Secretary determines whether an institution is financially responsible based on its ability to provide the services described in its official publications, properly administer the title IV, HEA programs, and meet all of its financial obligations.

The Secretary determines that a private non-profit or for-profit institution is financially responsible if it satisfies the ratio requirements and other criteria specified in the general standards under § 668.171(b). Under those standards, an institution:

- Must have a composite score (combining the named measures of financial health elements to yield a single measure of a school's overall financial health) of at least 1.5, based on its Equity, Primary Reserve, and Net Income ratios;
- Must have sufficient cash reserves to make required refunds;
- Must be current in its debt payments. An institution is not current in its debt payment if it is in violation of any loan agreement or fails to make a payment for 120 days on a debt obligation and a creditor has filed suit to recover funds under that obligation; and
- Must be meeting all of its financial obligations, including but not limited to refunds it is required to make under its refund policy or under § 668.22, and repayments to the Secretary for debts and liabilities arising from the institution's participation in the title IV, HEA programs.

Proposed Regulations: We are not proposing any changes to the composite score requirements under § 668.172 or in appendices A and B of subpart L, the refund reserve standards under § 668.73, or the past performance requirements under § 668.174.

We propose to restructure § 668.171, in part, by adding a new paragraph (c) that provides that an institution is not able to meet its financial or administrative obligations if it is subject to one or more of the following actions or triggering events:

- *Any of the following lawsuits and other actions.*

Claims and actions related to a Federal loan or educational services. Currently or at any time during the three most recently completed award years, the institution is or was required to pay a material amount, or incurs a material liability, arising from an investigation or similar action initiated by a State, Federal, or other oversight entity, or settles or resolves for a material amount a suit by that entity based on claims related to the making of a Federal loan or the provision of educational services. An amount paid or settled is material if it exceeds the lesser of the threshold amount for which an audit is required under 2 CFR part 200, currently $750,000, or 10 percent of the institution's current assets. Or, the institution is being sued by one or more State, Federal, or other oversight entities based on claims related to the making of a Federal loan or provision of educational services for an amount that exceeds the lesser of the threshold amount for which an audit is required under 2 CFR part 200, currently $750,000, or 10 percent of the institution's current assets.

Claims of any kind. The institution is currently being sued by one or more State, Federal, or other oversight entities based on claims of any kind that are not related to a Federal loan or educational services, and the potential monetary sanctions or damages from that suit or suits are in an amount that exceeds 10 percent of its current assets.

False claims and suits by private parties. The institution is currently being sued in a lawsuit filed under the False Claims Act or by one or more private parties for claims that relate to the making of loans to students for enrollment at the institution or the provision of educational services if that suit (1) has survived a motion for summary judgment by the institution and has not been dismissed, and (2) seeks relief in an amount that exceeds 10 percent of the institution's current assets.

For suits relating to claims of any kind, suits filed under the False Claims Act, 31 U.S.C. 3729 *et seq.*, or suits by private parties, during the fiscal year for which the institution has not yet submitted its financial statements, the institution settled or resolved the suit, had a judgment entered against it, or incurred a liability for an amount that exceeds 10 percent of its current assets.

An institution would determine whether any of these suits or actions exceeded a materiality threshold by using the current assets reported in its most recent audited financial statements submitted to the Department. Except for a suit by private parties, if a suit or action does not demand a specific amount of relief, the institution would calculate the potential amount of the relief by totaling the tuition and fees it received from every student who attended the institution during the period for which the relief is sought. In cases where no period is stated in the suit or action, the institution would total the tuition and fees it received from students who attended the institution during the three award years preceding the date that suit or action was filed or initiated.

- *Repayments to the Secretary.* Currently or at any time during the three most recently completed award years, the institution is or was required to repay the Secretary for losses from borrower defense claims in an amount that, for one or more of those years, exceeds the lesser of the threshold amount for which an audit is required under 2 CFR 200, currently $750,000, or 10 percent of the institution's current assets, as reported in the most recent audited financial statements.
- *Accrediting agency actions.* Currently or at any time during the three most recently completed award years, the institution's primary accrediting agency (1) required the institution to submit a teach-out plan, for a reason described in 34 CFR 602.24(c)(1), that covers the institution or any of its branches or additional locations, or (2) placed the institution on probation, show-cause, or similar status for failing to meet one or more of the agency's standards, and the accrediting agency does not notify the Secretary within six months of taking that action that the action is withdrawn because the institution has come into compliance with the agency's standards.
- *Loan agreements and obligations.* With regard to the creditor with the largest secured extension of credit, (1) the institution violated a provision or requirement in a loan agreement with that creditor, (2) the institution failed to make a payment in accordance with its debt obligations with that creditor for more than 120 days, or (3) as provided under the terms of the security or loan agreement, a default or delinquency event occurs or other events occur that trigger, or enable the creditor to require or impose, an increase in collateral, a change in contractual obligations, an increase in interest rates or payments, or other sanction penalty or fee. These actions would be disclosed in a note to the institution's audited financial statements or audit opinion, or reported to the Department by the institution.
- *Non-title IV revenue.* For its most recently completed fiscal year, a proprietary institution did not derive at least 10 percent of its revenue from sources other than title IV, HEA program funds, as provided under § 668.28(c) (90/10 revenue test).
- *Publicly traded institutions.* As reported by the institution, or identified by the Secretary, (1) the Securities and Exchange Commission (SEC) warns the institution or its corporate parent that it may suspend trading on the institution's stock, or the institution's stock is delisted involuntarily from the exchange on which the stock was traded, (2) the institution disclosed or was required to disclose in a report filed with the SEC a judicial or administrative proceeding stemming from a complaint filed by a person or entity that is not part of a State or Federal action, (3) the institution failed to file timely a required annual or quarterly report with the SEC, or (4) the exchange on which the institution's stock is traded notifies the institution that it is not in compliance with exchange requirements.
- *Gainful employment (GE).* As determined by the Secretary each year, the number of students enrolled in GE programs that are failing or in the zone under the D/E rates measure in § 668.403(c) is more than 50 percent of the total number of title IV recipients enrolled in all the GE programs at the institution. However, an institution is exempt from this provision if fewer than 50 percent of students enrolled at the institution who receive title IV, HEA program funds are enrolled in GE programs.
- *Withdrawal of owner's equity.* For an institution whose composite score is less than 1.5, any withdrawal of owner's equity from the institution by any means, including by declaring a dividend.
- *Cohort default rates.* The institution's two most recent official cohort default rates are 30 percent or greater, as determined under subpart N of 34 CFR part 668. However, this provision does not apply if the institution files a challenge, request for adjustment, or appeal under that subpart with regard to its cohort default rate, and that action results in (1) reducing its default rate below 30 percent, or (2) the institution not losing its eligibility or being placed on provisional certification.
- *Other events or conditions.* The Secretary determines that an event or condition is reasonably likely to have an adverse impact on the financial condition, business, or results of operations of the institution. These events or conditions would include but are not limited to whether:
  - There is a significant fluctuation between consecutive award years, or over a period of award years, in the amount of Direct Loan or Pell Grant funds, or a combination of those funds, received by the institution that cannot be accounted for by changes in those programs, such as changes in award amounts or eligibility requirements;
  - The institution is cited by a State licensing or authorizing agency for failing State or agency requirements;
  - The institution fails a financial stress test developed or adopted by the Secretary to evaluate whether the institution has sufficient resources to absorb losses that may be incurred as a result of adverse conditions and continue to meet its financial obligations to the Secretary and students;
  - The institution or corporate parent has a non-investment grade bond or credit rating;
  - As calculated by the Secretary, the institution has high annual dropout rates; or
  - Any event reported on a Form 8–K to the SEC.

In addition, we propose to add a new paragraph (d) under which an institution would notify the Secretary of any action or triggering event described above no later than 10 days after that action or event occurs. In that notice, the institution could show that certain actions or events are not material, or that those actions are resolved. Specifically, the institution would be permitted to demonstrate that:

- For a judicial or administrative proceeding the institution disclosed to the SEC, the proceeding does not constitute a material event;
- For a withdrawal of owner's equity, the withdrawal was used solely to meet tax liabilities of the institution or its owners for income derived from the institution; or, in the case where the composite score is calculated based on the consolidated financial statements of a group of institutions, the amount withdrawn from one institution in the group was transferred to another entity within that group;
- For a violation of a loan agreement, the creditor waived that violation. However, if the creditor imposes additional constraints or requirements as a condition of waiving the violation and continuing with the loan, the institution must identify and describe those constraints or requirements. In addition, if a default or delinquency event occurs or other events occur that trigger, or enable the creditor to require or impose, additional constraints or

penalties on the institution, the institution would be permitted to show why these actions would not have an adverse financial impact on the institution.

Reasons: As discussed under "Alternative standards and requirements," the Department seeks to identify, and take action regarding, material actions and events that are likely to have an adverse impact on the financial condition or operations of an institution. In addition to the current process where, for the most part, the Department determines annually whether an institution is financially responsible based on its audited financial statements, under these proposed regulations the Department may determine at the time a material action or event occurs that the institution is not financially responsible. The consequences of these actions and events threaten an institution's ability to (1) meet its current and future financial obligations, (2) continue as a going concern or continue to participate in the title IV, HEA programs, and (3) continue to deliver educational services. In addition, these actions and events call into question the institution's ability or commitment to provide the necessary resources to comply with title IV, HEA requirements.

Furthermore, we note that recent experiences with Corinthian, in which the Department ended up with no financial protection for either closed school or borrower defense claims, highlight the need to develop more effective ways to identify events or conditions that signal impending financial problems and secure financial protection while the institution has resources sufficient to provide that protection either by a letter of credit, or, by arranging a set-aside from current payables of Federal funds that could defray losses that may arise. Applying the routine tests under current regulations did not result in financial protection, because Corinthian appeared at the time it provided the Department with its audited financial statements to pass those tests. Only later—too late to secure financial protection—did further investigation reveal that Corinthian in fact had failed the financial tests in current regulations.[27] Based on that experience, we conclude that regulations must be revised to better identify signs, and to augment the Department's tools for detection, of impending financial difficulties that could be taken into account and that would have required Corinthian to provide financial protection.

Most visible among these actions or triggering events are investigations of, and suits against, institutions by State, Federal, and other oversight agencies. For example, the FTC has investigated or filed suit against institutions for deceptive and unfair marketing practices.[28] The SEC has investigated institutions for inflating job placement rates.[29] The DOJ, CFPB, and various State AGs have investigated or filed suit against institutions for making false claims to the Federal and State governments as well as violations of consumer protection laws, false advertising and deceptive practices, and falsifying job placement rates.[30] Putting aside, but in no way diminishing, the harm inflicted on students by troubling practices that precipitated these agency actions, the debts or liabilities resulting from those actions may be substantial.

For suits that are settled or investigations that are otherwise resolved, we initially proposed during negotiated rulemaking to adopt as materiality thresholds those amounts included in the SEC disclosure rules for legal proceedings under 17 CFR 229.103, otherwise referred to as Item 103 of Regulation S–K. Under those regulations, an entity filing an annual or quarterly report on Form 10–K or 10–Q with the SEC must disclose information about (1) any administrative or judicial proceeding that involves a claim for damages that exceeds 10 percent of the entity's current assets, or (2) any environmental claim where a governmental authority is a party to the proceeding and the monetary sanctions are more than $100,000.

Some of the non-Federal negotiators argued that the $100,000 threshold could easily be exceeded by claims resolved in favor of a small number of students, and that outcome would have no bearing on the financial operations of most institutions. Those negotiators suggested that a more reasonable threshold would be the amount applicable to audits required of non-profit and public entities that expend Federal funds. Under 2 CFR 200.501 of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Administrative Requirements), a non-Federal entity that expends more than $750,000 in Federal funds during its fiscal year must conduct an audit. We agreed, and propose in this NPRM to set the dollar threshold at the amount specified in the Uniform Administrative Requirements.

The non-Federal negotiators also argued that because the dollar threshold and the percentage threshold based on SEC disclosure requirements would apply to a suit based on claims that were not related to a Federal student aid activity or requirement (for example, a violation of copyright laws), the Federal protection that would otherwise be required under this circumstance is not warranted. We agreed, and propose in this NPRM to apply the dollar and percentage thresholds to those suits or actions that are based on claims related to the making of a Federal loan or the provision of educational services.

The publicity and information stemming from these suits and actions will make members of the public, and in particular currently enrolled and former students of the institution, aware or more aware of the alleged practices that gave rise to these suits and actions. As a result, we expect current and former students to be better informed and thus more likely to file borrower defense claims. Some students may file claims immediately after a suit or action is resolved, while others may take longer. In any case, because the institution is required to repay the Secretary for losses from borrower defense claims, the institution's liability does not end when it pays to resolve the suit or action; it continues as long as students file borrower defense claims based on the misconduct alleged and publicized in the suit. Consequently, if the amount paid by an institution to resolve the suit is material, it jeopardizes the institution's ability to meet not only its current financial obligations, but also future financial obligations stemming from borrower defense claims. For this reason, we propose that an institution is not financially responsible during the three-year period following the resolution if the amount the institution is required to pay is material—that is, it exceeds the lesser of the dollar or percentage thresholds. If the amount is not material, we believe it is unlikely that any resulting borrower defense claims will have an adverse impact on the institution.

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[27] At that very time, in 2013, the State of California had already sued Corinthian for widespread fraud. *California* v. *Heald Coll.*, No. CGC–13–534793 (Sup. Ct. S.F. County, filed Oct. 10, 2013).

[28] See, *e.g., Fed. Trade Comm'n* v. *DeVry Educ. Group, Inc.*, C.A. No. 15–CF–00758 (S.D. Ind. Filed Jan. 17, 2016).

[29] See, *e.g., Sec. and Exch. Comm'n* v. *ITT Educ. Servs. Inc.*, C. A. No. 1:15–cv–00758–JMS–MJD (S.D. Ind. filed May 12, 2015).

[30] See, *e.g., U.S. et al. ex rel. Washington* v. *Educ. Mgmt. Corp.*, C.A. No. 2:07-cv-00461–TFM (W.D. Pa. filed Aug. 8, 2011); *Consumer Fin. Prot. Bureau* v. *Corinthian Colls., Inc.*, C.A. No. 1:14–cv–07194 (N.D. Ill., filed Oct. 27, 2015); *California* v. *Heald Coll.*, No. CGC–13–534793 (Sup. Ct. S.F. County, filed Oct. 10, 2013).

For a suit or action initiated by a State, Federal, or other oversight agency, or by an individual or relator,[31] where the potential monetary sanctions or damages sought exceed 10 percent of an institution's current assets, we propose that the institution is not considered to be financially responsible for any year in which that suit or action is pending or unresolved.[32]

Like a contingent liability, a pending material government or individual action (one seeking an amount greater than 10 percent of current assets) would pose a threat to an institution's ability to meet its current financial obligations, because when a suit or action is settled or resolved, the institution must satisfy the resulting liability using current assets. In other words, a significant amount of current assets (cash and liquid assets, such as securities and accounts receivable, that can readily be converted to cash) that an institution would otherwise need to use to pay for typical current liabilities (for instance, wages payable and accounts payable) would be used instead to pay for damages stemming from the suit. However, for several reasons, we propose to treat a pending material State, Federal, or individual action as a liability for filed against the institution. First, as previously noted in this discussion, State and Federal suits and actions aim to address serious violations and harmful practices and may lead to settlements or compensation for victimized students, with an attendant financial burden on the institution. Moreover, it is not uncommon for several State AGs to file suits or take actions against an institution for the same or similar reasons or for State AGs to join a Federal action. These combined efforts underscore the severity and magnitude of the misconduct the suits or actions seek to address. Second, the impact of a suit or action may hinder or prevent investors or creditors from providing needed funds to an institution and make it more expensive for the institution to raise or obtain additional funds. Also, to protect their investment or stake in the institution, creditors may condition or alter the terms of existing loan agreements or otherwise make it more difficult for the institution to obtain additional loans. Third, the institution will have to use or divert resources that would otherwise be used to carry out normal operations to defray the costs of defending the litigation or the costs of achieving compliance with the State or Federal requirements on which the actions were based. In addition, it is not uncommon for the Department to impose additional administrative requirements on an institution subject to a suit or action, which may further stress the institution's financial resources. So, due to the severity and likely success of suits by State and Federal agencies or other oversight entities, and to account for the costs and risks stemming from a pending suit, we believe that a potential liability in the amount considered material under this proposed regulation would threaten an institution's ability to meet its current and future financial obligations.

With regard to the threshold relating to current assets, we note that on May 9, 1973, the SEC published final regulations reducing its threshold for disclosures relating to legal proceedings from 15 percent to 10 percent of current assets, stating that the reduced percentage is a "more realistic test of materiality." 38 FR 12100, 12101

We are not proposing any changes to the composite score requirements under § 668.172 or in appendices A and B of subpart L, the refund reserve standards under § 668.73, or the past performance requirements under § 668.174. We believe that the current financial ratio regulations in subpart L of part 668 reflect the kind of consideration of the effect of the financial risks that judgments and other actions pose on the ability of an institution to continue operating if faced with the need to satisfy such claims. We therefore include a brief explanation of the way this has been taken into account to some extent in the current regulations. For title IV purposes, KPMG Peat Marwick developed the composite score methodology that is the key element for establishing the financial responsibility requirements under 34 CFR part 668, subpart L. That methodology uses three ratios, Primary Reserve, Equity, and Net Income, to evaluate the overall financial health of an institution. Under this methodology, strength factors based on a common scale are assigned to each ratio result, making it arithmetically possible to weight and add the results of each ratio together to arrive at a composite score. The strength factors and weights were designed to reflect the different governing, mission, and operating characteristics of for-profit and non-profit institutions, and to allow institutions to offset a poor performance under one ratio with a good performance under another ratio.

The first of these ratios, the Primary Reserve ratio is a measure of an institution's expendable or liquid resource base in relation to its operating size, so it is in effect a measure of the institution's margin against adversity. A for-profit institution with a Primary Reserve ratio of 0.05 earns a strength factor of 1.0 which means that the value of the institution's assets that can be converted to cash exceeds its liabilities by an amount equal to five percent of its total expenses. Expressed in days, the institution could continue operations at its current level for about 18 days (5 percent of 365 days) without additional revenue or support. 62 FR 62854 (November 25, 1997). A non-profit institution with the same strength factor score could continue operations at its current level for about 37 days without additional revenue or support. *Id.* At this strength factor level, institutions have a small amount of expendable capital and would have difficulty finding resources internally to handle large negative economic events. Table 1 below shows, for a range of Primary Reserve ratio results, the margin against adversity expressed both as percentage of expendable assets that exceed liabilities and the number of days an institution can continue operations.

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[31] A person may bring a suit under the False Claims Act, 31 U.S.C. 3729 *et seq.*, on behalf of the United States against a party whom the relator claims submitted false claims to the government. The suit is referred to as a "qui tam" suit, and the person is referred to as a "relator."

[32] A party who submits false claims may be liable under the False Claims Act for treble the actual amount of the claim plus a penalty of at least $5000 per violation. 31 U.S.C. 3729(a)(1)

TABLE 1

Primary reserve ratio result	Liquid assets exceed liabilities, as % of total expenses	Strength factor	Survive without additional support, # of days
For-profit Institutions			
0.00	0	0	0
0.25	3	0.5	9
0.50	5	1	18
0.75	8	1.5	27
0.100	10	2	37
0.125	13	2.5	46
0.150	15	3	55
Non-profit Institutions			
0.00	0	0	0
0.05	5	0.5	18
0.10	10	1	37
0.15	15	1.5	55
0.20	20	2	73
0.25	25	2.5	91
0.30	30	3	110

As illustrated in Table 1, a for-profit institution with a Primary Reserve strength factor of less than 2.0, or a non-profit institution with a strength factor of less than 1.0, would generally not have resources that it could liquidate in the short term to cover current operations if it also had to pay damages or settle a suit for an amount that exceeds 10 percent of its expendable assets. However, the institution may have the ability to borrow the funds needed to cover operations and pay damages stemming from a suit. For that, we look to another component of the composite score, the Equity ratio.

The Equity ratio measures the amount of total resources that is financed by owners or the institution's investments, contributions, or accumulated earnings and how much of that amount is subject to claims of third parties. So, the Equity ratio captures an institution's overall capitalization structure and ability to borrow. The strength factors for the Equity ratio are the same for non-profit and for-profit institutions. A strength factor of zero means that that value of an institution's assets is equal to the value of its liabilities. For a for-profit institution, the absence of equity provides no evidence of owner commitment to the business because there are no accumulated earnings or invested amounts beyond the liabilities that are at risk. For a non-profit institution, the absence indicates there is little or no permanent endowment from which the institution could draw in extreme circumstances. At a strength factor of 1.0, an institution has about $8.33 of liabilities for every $10.00 of assets. However, this small amount of equity still makes it difficult for the institution to borrow significant amounts of money at market rates. For a strength factor of 2.0, the institution has about $6.67 of liabilities for every $10.00 of assets. At this strength factor and higher levels where an increasing proportion of the institution's resources are not subject to claims of third parties, it is more likely that the institution will be able to borrow significant amounts of money at market rates.

The remaining ratio, Net Income, is a primary indicator of the underlying causes of a change in an institution's financial condition because it directly affects the resources reflected on the institution's balance sheet (continued gains and losses measured by the ratio will impact all other fundamental elements of financial health over time). This ratio helps to answer the question of whether an institution "operated within its means" during its most recent fiscal year. A strength factor of 1.0 for the Net Income ratio means that an institution broke even for the year—it did not incur operating losses or add to its wealth with operating gains or surpluses. In other words, the institution was able to cover its cash and non-cash expenses for the year, but no more. As the strength factor increases, the wealth and surpluses added by operating gains help to increase an institution's margin against adversity.

An institution is financially responsible under the composite score methodology if, after weighting, the strength factors for all of the ratios sum to a score that is at least 1.5. For a for-profit institution, the weighting for each ratio is fairly equal—30 percent of the score is based on the Primary Reserve ratio, 40 percent on the Equity ratio, and 30 percent on the Net Income ratio. For a non-profit institution the weighting places less emphasis on the Net Income ratio at 20 percent, with the Primary Reserve and Equity ratios at 40 percent each. As noted previously, the weighting reflects the importance or significance of the operating characteristics in the two sectors.

In summary, a low strength factor for any of the three ratios indicates that an institution has little or no margin against adversity, and may not have the resources necessary to meet its operating needs. As one or more of the strength factors increase to 2.0 and above, the institution's margin against adversity improves through a combination of increases in expendable assets, equity, or operating gains. After accounting for the importance of each of the ratios, the composite score provides an overall measure of the financial health of an institution.

However, as shown in Table 1, the methodology contemplates that an institution should have expendable assets that exceed liabilities by at least 10 percent to earn a strength factor (1.0 for an non-profit, and 2.0 for a for-profit) for the Primary Reserve ratio that provides for a margin against adversity in keeping with the minimum passing composite score of 1.5. While a good performance under the Equity ratio may help an institution obtain resources to meet its operating and contingency needs, or a good performance under the Net Income ratio may increase its wealth over time, the expendable assets reflected in the Primary Reserve ratio, which represents 30 percent to 40 percent of the composite score, are the first line of defense in dealing with an adverse situation, such as a lawsuit. That is, an institution would first seek to pay damages resulting from the suit out of expendable assets or current assets as they are referred to under the comparable SEC materiality threshold. Either way, paying damages out of liquid assets for an amount above 10 percent of expendable or current assets is likely to have an adverse impact on an institution's ability to meet its current and future financial obligations, particularly if the institution has little or no liquid assets.

With regard to a suit that is based on claims other than the making of a Federal loan or the provision of educational services, while that suit is pending an institution would not be financially responsible. If the institution settles or otherwise resolves that suit for an amount that exceeds 10 percent of its current assets, the institution would still not be considered financially responsible until it submits audited financial statements that cover the fiscal year in which the suit was settled or resolved. At that point, the Department would be able to evaluate the impact of the suit through the calculation of the institution's composite score. So, until the Department calculates the institution's composite score, the institution would be treated as if the suit was still pending.

In cases where a suit or action does not demand a specific amount as relief, we could allow an institution to estimate and use that amount in determining whether the suit or action would exceed the materiality thresholds. However, doing so would lead to inconsistent and widely differing estimates among institutions, or more concerning, estimates significantly lower than the potential damages. Consequently, we propose a uniform approach under which the estimates are based on the total amount of tuition and fees received by the institution for students enrolled at the institution during the period for which the relief is sought. If no period is stated, an institution would estimate the amount based on the total amount of tuition and fees received by the institution for the three award years preceding the date the suit or action was filed or initiated. However, we do not believe this approach is appropriate for private party actions that do not demand a specific amount of relief because the reasons for those actions may impact a more limited group of students. We seek comment on this approach and on other approaches that provide a reasonable way to estimate the potential damages from suits and other actions.

With regard to repayments to the Secretary for losses to the Secretary from resolved borrower defense claims, an institution's ability to meet its current and future financial obligations is threatened whenever repayments for those losses rise to levels above the materiality thresholds, regardless of whether those repayments are related to or otherwise stem from the factual findings and theories resulting from an investigation or lawsuit initiated by the Department, a State or Federal agency, oversight entity, or some other party. Therefore, we propose to apply the dollar and percentage materiality thresholds to this triggering event.

To provide background on the proposed trigger relating to a teach-out plan, under 34 CFR 602.24(c)(1), an accrediting agency requires an institution to submit a teach-out plan whenever (1) the Secretary takes an emergency action or initiates a proceeding to limit, suspend, or terminate the institution's participation in the title IV, HEA programs, (2) the agency acts to withdraw, terminate, or suspend the accreditation or pre-accreditation of the institution, (3) the institution notifies the agency that it intends to cease operations entirely or close a location that provides 100 percent of at least one program, or (4) a State licensing or authorizing agency notifies the accrediting agency that it has or will revoke the institution's license or legal authorization to provide an educational program. Except for the closure of small locations, these actions jeopardize the institution's participation in the title IV, HEA programs. During the negotiated rulemaking sessions, some of the non-Federal negotiators noted that an institution may close a location that only a few students attended. In that case, the negotiators argued that some materiality threshold should apply because that closure would probably not have an adverse impact on the institution. Although those negotiators did not propose any specific thresholds, they suggested that thresholds based on the number of students enrolled or affected by the closure, or a dollar amount associated with those students, would be appropriate. We seek comment on whether the Department should adopt a threshold for this circumstance, and specifically seek comment on what that threshold should be.

With regard to a situation where an accrediting agency places an institution on probation, issues a show-cause order, or places an institution in a similar status, we view that action as calling into question the institution's ability to continue to provide educational services, and it may be a precursor to losing accreditation. Some of the non-Federal negotiators argued that because an institution may be placed on probation for a minor infraction or for a reason that could be readily resolved, the Department should not determine, or at least not determine immediately, that the institution is not financially responsible. In response, we suggested, and are proposing in this NPRM, that the Department would wait six months before making a determination to provide adequate time for an institution with a minor infraction to come into compliance with its accrediting agency standards. We also suggested during the negotiating sessions that we could accept an accrediting agency determination that an institution's failure to comply with agency standards within a six-month timeframe has not had and is not expected to have a material adverse financial impact on the institution, and that the agency anticipates the institution will come into compliance within a longer time frame set by the agency under 34 CFR 602.20. However, some of the non-Federal negotiators believed that an accrediting agency could not make this determination or make predictions about future compliance by an institution. We seek comment about whether or how we should provide a way for an accrediting agency to inform the Department why its action of placing an institution on probation will not have an adverse impact on the institution's financial or operating condition.

With regard to the triggers on loan agreements and obligations, some of the non-Federal negotiators believed that it was inappropriate to conclude that an institution is not financially responsible if it violates any loan agreement or fails to make a payment on a loan, regardless of the amount of or purpose for the loan or whether the loan was collateralized. In response we suggested, and are proposing in this NPRM, to apply this trigger when an institution violates a loan agreement with, or as currently provided under § 668.171(b)(3)(ii), fails to make a payment for more than 120 days to, the creditor with the largest secured extension of credit to the institution. We believe this proposal addresses the materiality concerns raised by the negotiators and speaks directly to an institution's ability to meet its current financial obligations. However, the creditor may impose penalties or more restrictive requirements on the institution under the terms of its security or loan agreements that call into question the institution's ability to meet its current and future financial obligations. The Department is particularly concerned about identifying events in which the institution displays early indications of financial difficulty, and taking appropriate precautions as early as possible to protect the taxpayer. Lenders and creditors that provide financing to an institution under security and loan agreements typically monitor the institution's financial performance to ensure that it satisfies the loan requirements and are thus in the best position to identify contemporaneously any risks or problems that may hinder or prevent the institution from doing so. If these risks or problems arise, the creditor may impose penalties and additional restrictions on the institution, including increasing collateral or compensating balance requirements. For this reason, we propose to treat the imposition of penalties and additional requirements in loan agreements as a triggering event but, under the reporting requirements in proposed paragraph (d), we will allow the institution to demonstrate that these actions by the creditor will not have adverse impact on the institution.

With regard to the 90/10 revenue test, a for-profit institution that fails the test for a fiscal year is in danger of losing its eligibility to participate in the title IV, HEA programs if it fails again in the subsequent fiscal year. Therefore, we believe this is an appropriate trigger to include.

For a publicly traded institution, we are proposing as triggers four SEC-related actions that jeopardize the institution's ability to meet its financial obligations or continue as a going concern. First, we propose as a trigger an SEC warning to the institution that it may suspend trading on the institution's stock and take other action regarding the registration status of the company, pursuant to section 12(k) of the Securities Exchange Act, 15 U.S.C. 78l(k). The SEC does not make this warning public or announce that it is considering a suspension until it determines that the suspension is required to protect investors and the public interest.[33] In that event, the SEC posts the suspension and the grounds for the suspension on its Web site. However, under the reporting requirements in proposed § 668.171(d), the institution would be required to notify the Department within 10 days of receiving such a warning from the SEC. The SEC may decide to suspend trading on the institution's stock based on (1) a lack of current, accurate, or adequate information about the institution, for example when the institution is not current in filing its periodic reports, (2) questions about the accuracy of publicly available information, including information in institutional press releases and reports and information about the institution's current operational status, financial condition, or business transactions, or (3) questions about trading in the stock, including trading by insiders, potential market manipulation, and the ability to clear and settle transactions in the stock.[34]

Second we propose that whenever the exchange on which the institution's stock is traded notifies the institution that it is not in compliance with exchange requirements, that notice is a triggering event. The major exchanges typically require institutions whose stock is listed to satisfy certain minimum requirements such as stock price, number of shareholders, and the level of shareholder's equity.[35] If a stock falls below the minimum price, other requirements are not met, or the institution fails to provide timely reports of its performance and operations in its Form 10–Q or 10–K filings with the SEC, the exchange may delist the institution's stock. Delisting is generally regarded as the first step toward Chapter 11 bankruptcy. However, before the exchange initiates a process to delist the stock, it notifies the institution and gives it several days to respond with a plan of the actions it intends to take to come into compliance with exchange requirements.

Third, as proposed, if an institution discloses or is required to disclose in a report filed with the SEC a judicial or administrative proceeding stemming from a complaint filed by a person or entity that is not part of a State or Federal action, that would be a triggering event. SEC rules require the institution to disclose litigation that is material within the context of its disclosure obligations to investors. 17 CFR 229.103. We recognize that publicly traded institutions may, to comply unequivocally with this obligation, report litigation that they would not otherwise consider to be a material adverse event. As noted in the description of these proposed regulations above, an institution that makes such a disclosure of litigation in an SEC filing may explain in reporting that disclosure to the Department why that litigation or suit does not constitute a material adverse event that would pose an actual risk to its financial health.

Fourth, we propose to add as a trigger the institution's failure to file timely a required annual or quarterly report with the SEC. As noted previously in this discussion, the late filing of, or failure to file, a required SEC report may precipitate an adverse action by the SEC or a stock exchange. We seek comment on how we could more narrowly tailor these proposed triggers for publicly traded institutions to capture only those circumstances that could pose a risk to the institution's financial health.

The proposed GE trigger would apply to an institution at which the majority of its students who receive title IV, HEA assistance are enrolled in GE programs, and the majority of those GE students enroll in failing and zone programs. Since failing and zone programs are in danger of losing the title IV, HEA eligibility, the corresponding loss of revenue from those programs may jeopardize the institution's ability to continue as a going concern. In addition, because most of the GE students are enrolled in programs that have not enabled former graduates to earn enough to afford to pay their student loans, we question the institution's ability to provide adequate educational services. We seek comment on whether the majority of students that enroll in zone or failing GE programs is an appropriate threshold or whether and why we should adopt a different threshold.

The withdrawal of owner's equity is currently an event that an institution reports to the Department under the provisions of the zone alternative in § 668.175(d). An institution participates under the zone alternative if its composite score is between 1.0 and 1.5. We proposed at negotiated rulemaking and propose in this NPRM to relocate this provision to the general standards of financial responsibility under § 668.171. Under the general standards, this provision would become a trigger in cases where an institution's financial condition is already precarious and any withdrawal of funds from the institution would further jeopardize its ability to continue as a going concern or its continued participation in the title IV, HEA programs. However, as noted in the discussion of these proposed regulations above, an institution may show that the withdrawal of funds was for a legitimate purpose or that it has no impact on the institution's composite score.

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[33] See SEC Investor Bulletin: Trading Suspensions, available at *www.sec.gov/answers/tradingsuspension.htm.*

[34] Id.

[35] See, *e.g.*, New York Stock Exchange Rule 801.00:

> Suspension and Delisting: Securities admitted to the list may be suspended from dealings or removed from the list at any time that a company falls below certain quantitative and qualitative continued listing criteria. When a company falls below any criterion, the Exchange will review the appropriateness of continued listing.

Available at *http://nysemanual.nyse.com/lcm/sections/lcm-sections/chp_1_9/default.asp.*

With regard to the trigger for an institution whose cohort default rate is 30 percent or more for two consecutive years, the institution is in danger of losing its program eligibility in the subsequent year if its cohort default rate is again 30 percent or more. However, if the institution files a challenge, request for adjustment, or appeal under subpart N, we propose to wait until that challenge, request, or appeal is resolved before determining whether the institution violated the trigger. However, we seek comment on whether this trigger should apply to an institution whose cohort default rate is 30 percent or more for any one year because, under that circumstance, the institution is required by statute to develop a default prevention plan and submit it to the Secretary, indicating that Congress recognized the risk that such an institution could pose to borrowers and taxpayers and therefore warranted a plan for remediation after a single year of low performance.

As discussed during the negotiated rulemaking sessions, all of these actions and events would serve as "automatic triggers," meaning that an institution would not be financially responsible for at least one year based solely on the occurrence of that action or event, or for the triggers relating to an action by a State, Federal, or other oversight entity, including an accrediting agency, would not be financially responsible for a period of three years after an action by that agency. During negotiated rulemaking we also discussed, and we have proposed in this NPRM, other factors or conditions that the Secretary could consider in determining whether an institution is financially responsible. These factors and conditions, which we refer to as "discretionary triggers," are factors or conditions that could be reasonably likely to have an adverse impact on the financial condition, business, or results of operations of a particular institution. If the Secretary determines that any of these factors alone or in combination calls into question the financial capability of an institution, the Secretary notifies the institution of the reasons for that determination.

Two of the discretionary triggers, fluctuations in Direct Loan and Pell Grant funds and high dropout rates, stem from the statutory provisions for selecting institutions for program reviews in section 498a(a) of the HEA. 20 U.S.C. 1099c–1(a). Significant increases or decreases in the volume of Federal funds may signal rapid expansion or contraction of an institution's operations that may either cause or be driven by negative turns in the institution's financial condition or its ability to provide educational services. Similarly, high dropout rates may signal that an institution is employing high-pressure sales tactics or is not providing adequate educational services, either of which may indicate financial difficulties and result in enrolling students who will not benefit from the training offered and will drop out, leading to financial hardship and borrower defense claims.

Another discretionary trigger deals with the oversight activities of a State authorizing or licensing agency, where a failure by an institution to comply with agency requirements could jeopardize its ability to operate, or provide educational programs, in that State.

Some non-Federal negotiators expressed support for the proposed use of a financial stress test that would be developed or adopted by the Department. Under the test, we would be able to assess or model an institution's ability to deal with an economic crisis or other adverse conditions. Like the composite score, the stress test could be used to assess whether, or to augment an analysis of whether, an institution is able to meet its financial obligations to students and the Secretary. An institution's bond or credit rating could be used in a similar way. During negotiated rulemaking we proposed, and propose in this NPRM, that an institution with a non-investment grade bond or credit rating[36] could be subject to additional scrutiny because any rating below investment grade indicates that the institution is likely to default on the debt for which that rating is issued.

The last discretionary trigger, any event reported by an institution to the SEC on a Form 8–K, is intended to capture events that are not included in the automatic triggers but may nevertheless have a significant adverse impact on business operations. For example, an institution must report to the SEC that a material definitive agreement (a contract on which business operations are substantially dependent) was terminated.

Under the reporting requirements in proposed § 668.171(d), an institution would notify the Department of any action or event that constitutes an automatic or discretionary trigger no later than 10 days after that action or event occurs. Some of the non-Federal negotiators identified a few events that may not be material or would be resolved during the reporting period and argued that these events should not prompt any action by the Department. We agreed, and propose in this NPRM that, to keep the Department apprised, an institution would still be required to report those events but the institution may tell us in its notice why the action or event is not material or that it has been resolved. If we do not agree with the institution's assessment, the Department will notify the institution of the reasons for that determination.

Alternative Standards and Requirements (§ 668.175)

Statute: Under sections 437(c) and 464(g) of the HEA, if the Secretary discharges a borrower's liability on a loan due to the closure of an institution, false certification, or unpaid refund, the Secretary pursues a claim against the institution or settles the loan obligation pursuant to the financial responsibility standards described in section 498(c).

Section 498(c)(3) of the HEA provides that if an institution fails the composite score or other criteria established by the Secretary to determine whether the institution is financially responsible, the Secretary must determine that the institution is financially responsible if it provides third-party financial guarantees, such as performance bonds or letters of credit payable to the Secretary, for an amount that is not less than one-half of the annual potential liabilities of the institution to the Secretary for title IV, HEA funds, including liabilities for loan obligations discharged pursuant to section 437, and to students for refunds of institutional charges, including required refunds of title IV, HEA funds.

Under section 498(h) of the HEA, the Secretary may provisionally certify an institution's eligibility to participate in the title IV, HEA programs for not more than one year in the case of an institution seeking an initial certification, or for no more than three years for an institution that seeks to renew its certification, if, in the judgment of the Secretary, the institution is in an administrative or financial condition that may jeopardize its ability to perform its financial responsibilities under a program participation agreement. If, prior to the end of a period of provisional certification, the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement, the Secretary may revoke the institution's provisional certification to participate in the title IV, HEA programs.

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[36] Generally, a bond rating lower than Baa3 (Moody's) or BBB− (Standard and Poor's, Fitch). *www.investopedia.com/exam-guide/series-7/debt-securities/bond-ratings.asp.*

Current Regulations: Section 668.13(c) of the current regulations identifies the reasons and conditions for which the Secretary may provisionally certify an institution to participate in the title IV, HEA programs, including an institution's failure to meet the standards of financial responsibility under § 668.15 or subpart L of the general provisions regulations. Under § 668.13(c)(4), an institution may participate in the title IV, HEA programs under a provisional certification if the institution demonstrates to the Secretary's satisfaction that it (1) is capable of meeting the standards of participation in subpart B of the general provisions regulations within a specified period, and (2) is able to meet its responsibilities under its program participation agreement, including compliance with any additional conditions that the Secretary requires the institution to meet for the institution to participate under a provisional certification. If the Secretary determines that the institution is unable to meet its responsibilities under its provisional program participation agreement, the Secretary may revoke the institution's provisional certification as provided under § 668.13(d).

As provided under § 668.175, an institution that is not financially responsible under the general standards in § 668.171 may begin or continue to participate in the title IV, HEA programs only by qualifying under an alternative standard.

Under the zone alternative in § 668.175(d), a participating institution that is not financially responsible solely because its composite score is less than 1.5 may participate as a financially responsible institution for no more than three consecutive years, but the Secretary requires the institution to (1) make disbursements to students under the heightened cash monitoring or reimbursement payment methods described in § 668.162, and (2) provide timely information regarding any adverse oversight or financial event, including any withdrawal of owner's equity from the institution. In addition, the Secretary may require the institution to (1) submit its financial statement and compliance audits earlier than the date specified in § 668.23(a)(4), or (2) provide information about its current operations and future plans.

Under the provisional certification alternative in § 668.175(f), an institution that is not financially responsible because it does not meet the general standards in § 668.171(b), or because of an audit opinion in § 668.171(d) or a condition of past performance in § 668.174(a), may participate under a provisional certification for no more than three consecutive years, if the institution (1) provides an irrevocable letter of credit, for an amount determined by the Secretary that is not less than 10 percent of the title IV, HEA program funds the institution received during its most recently completed fiscal year, (2) demonstrates that it was current in its debt payments and has met all of its financial obligations for its two most recent fiscal years, and (3) complies with the provisions under the zone alternative.

Proposed Regulations: We propose to relocate to proposed new § 668.171(c) two of the oversight and financial events that an institution currently reports to the Department under the zone alternative in § 668.175(d)(2)(ii)—actions by an accrediting agency and any withdrawal of owner's equity from the institution. In addition we propose to remove from § 668.175(d)(2) the two reporting events related to loan agreements and debt obligations.

Under the provisional certification alternative in § 668.175(f), we propose to add a new paragraph (4) that ties the amount of the financial protection that an institution must provide to the Secretary to an action or triggering event described in § 668.171(c). Specifically, under this alternative, an institution would be required to provide to the Secretary financial protection, such as an irrevocable letter of credit, for an amount that is:

- For a State or Federal action under § 668.171(c)(1)(i) or (ii), 10 percent or more, as determined by the Secretary, of the amount of Direct Loan Program funds received by the institution during its most recently completed fiscal year;
- For repayments to the Secretary for losses from borrower defense claims under § 668.171(c)(2), the greatest annual loss incurred by the Secretary during the three most recently completed award years to resolve those claims or the amount of losses incurred by the Secretary during the current award year, whichever is greater, plus a portion of the amount of any outstanding or pending claims based on the ratio of the total value of claims resolved in favor of borrowers during the three most recently completed award years to the total value of claims resolved during the three most completed award years; and
- For any other action or triggering event described in § 668.171(c), or if the institution's composite score is less than 1.0, or the institution no longer qualifies under the zone alternative, 10 percent or more, as determined by the Secretary, of the total amount of title IV, HEA program funds received by the institution during its most recently completed fiscal year.

We propose to remove § 668.175(e) because the transition year alternative, which pertains to fiscal years beginning after July 1, 1997 and before June 30, 1998, is no longer applicable.

In addition, we propose to add a new paragraph (h) that provides for providing financial protection using a set-aside in lieu of cash or a letter of credit. If an institution does not provide cash or the letter of credit for the amount required to participate under the zone or provisional certification alternatives within 30 days of the Secretary's request, the Secretary would provide funds to the institution only under the reimbursement or heightened cash monitoring payment methods, and would withhold temporarily a portion of any reimbursement claim payable to the institution in an amount that ensures that by the end of a nine-month period, the total amount withheld equals the amount of cash or the letter of credit the institution would otherwise provide. The Secretary would maintain the amount of funds withheld under this offset arrangement in a temporary escrow account, would use the funds to satisfy the debt and liabilities owed to the Secretary that are not otherwise paid directly by the institution, and would return to the institution any funds not used for this purpose during the period for which the cash or letter of credit was required.

Reasons: The reportable items under the zone alternative were intended to alert the Department to adverse actions or events that could occur at any time, or fall outside the scope of activities that are typically included or disclosed in financial statements, and that could further degrade the financial health of an institution with little or no margin against adversity. As noted previously, the Department is taking a more contemporaneous and broader view of the actions or events that are likely to have an adverse impact on an institution, regardless of whether the institution is participating under the zone or another alternative. As such, the reportable events under the zone alternative relating to adverse actions by an accrediting agency or withdrawals of owner's equity fall naturally under the scope of triggering events for the general standards of financial responsibility. With regard to removing the reporting requirements for loan agreements and debt obligations from the zone alternative, we note that while the provisions relating to loan agreements and debt obligations are currently part of the general standards, the Department typically relies on footnote disclosures in the financial statements to determine whether an institution violated those agreements or obligations. Because we would require under proposed § 668.171(d) that institutions report these violations no later than 10 days after they occur, there would be no need to maintain the same reporting under the zone alternative.

With regard to the proposed changes under the provisional certification alternative that tie the amount of the financial protection, such as a letter of credit, to an action or triggering event, as explained more fully under the discussion of the general standards in § 668.171, every cited action or event is material and, on its own, likely to have an adverse impact on the institution. So, while the Secretary retains the discretion to determine the amount of the financial protection for any action or event, we propose for most of the triggering events to set as a floor the longstanding minimum—10 percent of the amount of title IV, HEA program funds received by the institution during its most recently completed fiscal year. To be clear, each of these triggering events would require a form of financial protection, such as a letter of credit, of at least 10 percent, so an institution with three triggering events would have to submit financial protection for at least 30 percent of its prior year title IV, HEA program funds.

For borrower defense claims, the amount of the financial protection is tied to the prior experience or history of an institution in having to reimburse the Secretary for losses stemming from those claims and the potential for future losses. As proposed, the Department would calculate the amount of the financial protection by looking at the three most recently completed award years and the current award year to determine the year in which the greatest Federal losses occurred, and adding to that amount an estimate for the amount of losses from any outstanding or pending claims. For example, the estimated loss for pending claims would be calculated by multiplying the percentage of prior claims resolved in the students' favor (say 75 percent) by the total amount of the pending claims (say $500,000), or $375,000. In the normal course, the Department would first seek reimbursement from the institution before using the financial protection to recover losses from borrower defense claims.

For a State or Federal action under § 668.171(c)(1)(i) or (ii), the amount of the financial protection is based only on Direct Loan funds, instead of all title IV, HEA funds as for all of the other triggers, because the Federal protection sought is related directly to loan liabilities that could arise in the wake of a State or Federal agency suit against the institution.

With regard to the set-aside, the Department wishes to provide an alternative to an institution that, for costs or other reasons, is unable to provide a letter of credit, or cash equivalent to the amount of the letter of credit, within 30 days. However, while we acknowledge that obtaining a letter of credit could be costly and time consuming for some institutions, or obtaining a letter of credit collateralized by physical assets requiring valuation by a bank or creditor could take an extended time, we believe that the severity or potential consequences of the triggering events warrant the Department taking immediate steps to protect the Federal interest. Therefore, if an institution does not provide the letter of credit or cash within 30 days of the Secretary's request, the Department would initiate administrative offsets to implement the set-aside.

Severability

Current Regulations: None.

Proposed Regulations: Proposed § 668.176 would make clear that, if any part of the proposed regulations for part 668, subpart L, whether an individual section or language within a section, is held invalid by a court, the remainder would still be in effect.

Reasons: We believe that each of the proposed provisions proposed in this NPRM serves one or more important, related, but distinct, purposes. Each of the requirements provides value to students, prospective students, and their families, to the public, taxpayers, and the Government, and to institutions separate from, and in addition to, the value provided by the other requirements. To best serve these purposes, we would include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Debt Collection

How does the Secretary exercise discretion to compromise a debt or to suspend or terminate collection of a debt? (§ 30.70)

Statute: Section 432(a) of the HEA authorizes the Secretary to enforce or compromise a claim under the FFEL Program; section 451(b) provides that Direct Loans are made under the same terms and conditions as FFEL Loans; and section 468(2) authorizes the Secretary to enforce or compromise a claim on a Perkins Loan. Section 452(j) of the General Education Provisions Act (GEPA) authorizes certain compromises under Department programs, and 31 U.S.C. 3711 authorizes a Federal agency to compromise or terminate collection of a debt, subject to certain conditions.

Current Regulations: The current regulation in § 30.70 was adopted in 1988 to describe the procedures and standards the Secretary follows to compromise, or suspend or terminate collection of, debts arising under programs administered by the Department. The HEA has, since 1965, authorized the Secretary to compromise—without dollar limitation—debts arising from title IV, HEA student loans. The Federal Claims Collection Act of 1966 (FCCA), now at 31 U.S.C. 3711, authorized Federal agencies to compromise, or suspend or terminate collection of, debts, subject to dollar limitations and compliance with the Federal Claims Collection Standards (FCCS), now at 31 CFR 900–904. As in effect in 1988 when the current regulation was adopted, the FCCA required agencies generally to obtain approval from the DOJ in order to resolve debts exceeding $20,000, unless DOJ were to prescribe a higher amount. No higher amount was prescribed, and the Department included that $20,000 dollar limit in § 30.70.

In 1988, section 452(j) of GEPA (20 U.S.C. 1234a(j)) was enacted to provide standards and procedures for certain compromises of debts arising under any program administered by the Department other than the Impact Aid Program or HEA programs. These provisions were also included in § 30.70(c), (d), and (e). However, in 1989, the Department adopted 34 CFR 81.36 to implement these same GEPA standards; that regulation supersedes current § 30.70(c), (d), and (e) to govern compromises of debts under certain Department programs. Compromises of debts under Department programs that do not fall under standards in § 81.36 would continue to be subject to the standards and dollar limits generally applicable to Department debts. In 1990, in Public Law 101–552, Congress increased the size of debts that agencies may resolve without DOJ approval to $100,000; that change is not reflected in § 30.70. Finally, in 2008, Public Law 110–315 amended section 432 of the HEA to require the Department to provide DOJ an opportunity to review and comment on any proposed resolution of a claim arising under any of the title IV, HEA loan programs that exceed $1,000,000. That, too, is not reflected in current § 30.70.

Proposed Regulations: The proposed changes would revise § 30.70 to—

- Reflect the increased debt resolution authority ($100,000);
- Refer to § 81.36 to describe the authority and procedures for those compromises of claims that are subject to section 452(j) of GEPA;
- Clarify that the generally applicable $100,000 limit does not apply to resolution of claims arising under the FFEL Program, or under the Direct Loan Program or Perkins Loan Program; and include the requirement that the Department seek DOJ review of any proposed resolution of a claim exceeding $1,000,000 under any of those loan programs.

Reasons: The current regulations do not reflect a series of statutory changes that have expanded the Secretary's authority to compromise, or suspend or terminate the collection of, debts.

Closed School Discharges (§§ 668.14, 673.33, 682.402, and 685.214)

Statute: Sections 437(c) and 464(g)(1) of the HEA provide for the discharge of a borrower's liability to repay a FFEL Loan or a Perkins Loan if the student is unable to complete the program in which the student was enrolled due to the closure of the school. The same benefit applies to Direct Loan borrowers under the parallel terms, conditions, and benefits provisions in section 455(a) of the HEA.

Current Regulations: Section 668.14(b)(31) provides that, as part of an institution's program participation agreement, the institution must submit a teach-out plan, if, among other conditions, the institution intends to close a location that provides 100 percent of at least one program offered by the institution or if the institution otherwise intends to cease operations. Sections 674.33(g), 682.402(d), and 685.214 describe the qualifications and procedures in the Perkins, FFEL, and Direct Loan Programs for a borrower to receive a closed school discharge.

Proposed Regulations: Proposed § 668.14(b)(32) would require, as part of its program participation agreement with the Department, a school to provide all enrolled students with a closed school discharge application and a written disclosure, describing the benefits and the consequences of a closed school discharge as an alternative to completing their educational program through a teach-out plan after the Department initiates any action to terminate the participation of the school in any title IV, HEA program or after the occurrence of any of the events specified in § 668.14(b)(31) that would require the institution to submit a teach-out plan.

Proposed revisions to § 682.402(d)(6)(ii)(F) would require a guaranty agency that denies a closed school discharge request to inform the borrower of the opportunity for a review of the guaranty agency's decision by the Secretary, and explain how the borrower may request such a review. Proposed § 682.402(d)(6)(ii)(K) would describe the responsibilities of the guaranty agency and the Secretary if the borrower requests such a review.

Under current and proposed 682.402(d)(6)(ii)(H) and 685.214(f)(4), as well as under current §§ 674.33(g)(8)(v), if a FFEL or Direct Loan borrower fails to submit a completed closed school discharge application within 60 days of the notice of availability of relief, the guaranty agency or the Department resumes collection on the loan. However, proposed §§ 674.33(g)(8)(vi), 682.402(d)(6)(ii)(I), and 685.214(f)(5) would require the guaranty agency or the Department, upon resuming collection, to provide a Perkins, FFEL, or Direct Loan borrower with another closed school discharge application, and an explanation of the requirements and procedures for obtaining the discharge.

Proposed §§ 674.33(g)(3)(iii), 682.402(d)(8)(iii), and 685.214(c)(2) would authorize the Department, or a guaranty agency with the Department's permission, to grant a closed school discharge to a Perkins, FFEL, or Direct Loan borrower without a borrower application based on information in the Department's or guaranty agency's possession that the borrower did not subsequently re-enroll in any title IV-eligible institution within a period of three years after the school closed.

Reasons: Many borrowers eligible for a closed school discharge do not apply. The Department is concerned that borrowers are unaware of their possible eligibility for a closed school discharge because of insufficient outreach and information about available relief. In some instances, the closing school might inform borrowers of the option to complete their program through a teach-out, but fail to advise them of the option for a closed school discharge. Currently, the Department sends identified eligible borrowers an application and an explanation of the qualifications and procedures to obtain a closed school discharge. Schools that close, or close a location, may also conduct teach-outs in accordance with their accreditor's standards. The proposed amendments to the program participation agreement regulations would provide such information to borrowers earlier in the process, and would help to ensure that the borrowers receive accurate and complete information with regard to their eligibility for a closed school discharge, as well as the consequences of receiving such a discharge.

Non-Federal negotiators cited cases in which schools that were closing or had closed failed to provide complete or accurate information to their students about their options. They described instances in which schools told students that, if the student received a closed school discharge, the credits that the student earned at the school would not be transferable to another school. While borrowers who receive a closed school discharge may be able to transfer the credits that they have earned, others may struggle to find another institution willing to accept those credits. Yet relying on the information provided to them, these borrowers often choose teach-outs rather than closed school discharges. Though teach-outs can be beneficial to borrowers in a closed school situation, a closed school discharge may be a better option for some students.

In the Perkins and Direct Loan Programs, closed school discharge determinations are generally made by the Department. The Department is the loan holder for all Direct Loans, and would become the loan holder for Perkins Loans held by a school that closes. In the FFEL Program, closed school discharge determinations are generally made by a guaranty agency. Under the current FFEL Program regulations, a borrower cannot request a review of a guaranty agency's determination of a borrower's eligibility for a closed school discharge. Proposed § 682.402(d)(6)(ii)(F) would provide for Departmental review of denied closed school discharge claims in the FFEL Program in order to provide an opportunity for a more complete review of their claims, comparable to that provided in current regulations for false certification claims.

The proposed amendments to the FFEL, Perkins, and Direct Loan regulations, which would require loan holders to send borrowers a second closed school application if a borrower fails to submit an application within 60 days of the date the first application was sent, are intended to provide another opportunity to encourage borrowers who may be eligible for the closed school discharge to apply.

The Department proposed during negotiated rulemaking that the Secretary allow closed school discharges to be granted without an application in all three loan programs if the borrower does not re-enroll in a title IV-eligible program within three years. We asserted that such borrowers can be assumed to not have completed their academic program through a teach-out or transfer, and have included these provisions in the proposed regulations. We also asserted that an application or discharge request in these cases should not be necessary. By amending the regulations to provide for more outreach, disclosure of a borrower's options in a teach-out situation, and review by the Secretary of guaranty agency determinations, we hope to increase the number of eligible borrowers who apply for and receive a closed school discharge.

Death Discharges (§§ 674.61(a), 682.402(b)(2), 685.212(a), and 686.42(a))

Statute: Section 420N(d)(2) of the HEA provides for the Secretary to establish, through regulation, categories of extenuating circumstances under which a TEACH Grant recipient who is unable to satisfy all or part of the TEACH Grant service obligation may be excused from fulfilling that portion of the service obligation.

Section 437(a)(1) of the HEA provides for the discharge of a loan made under the FFEL Program if the borrower dies. In accordance with section 455(a)(1) of the HEA, this discharge provision also applies to loans made under the Direct Loan Program.

Section 464(c)(1)(F)(i) provides that the liability to repay a Perkins Loan is cancelled upon the death of the borrower.

Current Regulations: For the Perkins Loan Program, § 674.61(a) provides that an institution must discharge the unpaid balance on a Perkins Loan if the borrower dies. For the FFEL Program and the Direct Loan Program, §§ 682.402(b)(2) and 685.212(a)(1), respectively, provide for the discharge of a loan based on the death of the borrower or, in the case of a PLUS loan made to a parent, the death of the student on whose behalf the parent borrowed. For the TEACH Grant Program, § 686.42(a) specifies that the Secretary discharges a grant recipient's obligation to complete the agreement to serve if the grant recipient dies. For all of these programs, the current regulations specify that a death discharge can be granted based on an original or certified copy of the borrower's, student's, or TEACH grant recipient's death certificate; an accurate and complete photocopy of the original or a certified copy of the death certificate; or, on a case-by-case basis, other reliable documentation of the individual's death.

Proposed Regulations: We propose to amend §§ 674.61(a), 682.402(b)(2), 685.212(a), and 686.42(a) to allow for death discharges to be granted based on an accurate and complete original or certified copy of a death certificate that is scanned and submitted electronically or sent by facsimile transmission, or verification of a borrower's, student's or TEACH Grant recipient's death through an authoritative Federal or State electronic database that is approved for use by the Secretary. The proposed regulations would also make minor changes to the current death discharge regulatory language to make it more consistent across the title IV, HEA programs.

Reasons: The proposed regulations would streamline the death discharge process and reduce administrative burden by allowing for death certificates to be submitted electronically or by facsimile transmission, and would further simplify the process in the future by allowing for death discharges to be granted based on verification of an individual's death through an authoritative Federal or State electronic database that the Secretary authorizes to be used for this purpose.

During the negotiations, a non-Federal negotiator asked if, under the proposed regulations, it would be permissible for a loan holder to automatically grant a death discharge based on verification of a borrower's or student's death in an approved State or Federal electronic database, without the loan holder having received a request for the death discharge from a family member. The Department responded that loan holders can only grant death discharges after being informed of the borrower's or student's death by a family member or other representative of the deceased individual, but that they can use the information in an approved electronic database as the necessary supporting documentation for doing so.

Interest Capitalization (§§ 682.202(b)(1), 682.410(b)(4), and 682.405)

Statute: Section 428H(e)(2) of the HEA allows a FFEL Program lender to capitalize interest when the loan enters repayment, upon default, and upon the expiration of deferment and forbearance, but does not specifically authorize the capitalization of interest when a defaulted loan is rehabilitated.

Current Regulations: The current FFEL Program regulations in §§ 682.202, 682.405, and 682.410 permit FFEL Program lenders to capitalize interest when the borrower enters or resumes repayment and requires a guaranty agency to capitalize interest when it pays the FFEL Program lender's default claim. However, these regulations do not specifically address whether a guaranty agency may capitalize interest when the borrower has rehabilitated a defaulted FFEL Loan or whether a FFEL Program lender may capitalize interest when purchasing a rehabilitated FFEL Loan from a guaranty agency.

Proposed Regulations: The proposed revisions to the above-referenced regulations would clarify that the only time that a guaranty agency may capitalize interest is when it pays the FFEL Program lender's default claim and, therefore, that capitalization by the guaranty agency when selling a rehabilitated FFEL Loan is not permitted. Similarly, the proposed regulations would clarify that capitalization by the FFEL Program lender when purchasing a rehabilitated FFEL Loan is not permitted. The proposed regulations would also clarify, through a conforming change, that, when a guaranty agency holds a defaulted FFEL Loan and the guaranty agency has suspended collection activity to give the borrower time to submit a closed school or false certification discharge application, capitalization is not permitted if collection on the loan resumes because the borrower does not return the appropriate form within the allotted timeframe.

Reasons: Currently, some guaranty agencies and FFEL Program lenders capitalize interest when the borrower rehabilitates the loan, while others do not. Also, some guaranty agencies capitalize interest when resuming collection on a defaulted FFEL Loan when a borrower has not submitted a closed school or false certification discharge with a specific timeframe. The Department does not believe that interest capitalization in either circumstance is warranted, and the Department does not capitalize interest on loans that it holds in comparable circumstances. Further, the Department believes that FFEL Program lenders, in the case of a rehabilitated FFEL Loan, have sufficient tools at their disposal to ensure that a rehabilitated loan that has an outstanding interest balance is repaid in full by the end of the applicable repayment period or, in the case of the income-based repayment plan, forgiven.

Loan Repayment Rate Warnings and Financial Protection Disclosures (§ 668.41)

Statute: Under 20 U.S.C. 1221–3 and 3474, the Secretary is authorized to adopt such regulations as needed for the proper administration of programs.

Current Regulations: Current § 668.41 requires institutions to make certain general disclosures of information to enrolled and prospective students, including availability of financial assistance, detailed institutional information, retention rate, completion and graduation rates, and placement of and types of employment obtained by graduates. Section 668.41 further requires specialized disclosures related to the "Annual Security Report and Annual Fire Safety Report," the "Report on Completion or Graduation Rates for Student-Athletes," and the "Report on Athletic Program Participation Rates and Financial Support Data."

Proposed Regulations

Proprietary Institution Loan Repayment Warning

Proposed § 668.41(h) would expand the reporting and disclosure requirements under § 668.41 to provide that, for any fiscal year in which an affected postsecondary institution has a loan repayment rate that is less than or equal to zero, the institution must deliver a Department-issued plain language warning to prospective and enrolled students and place the warning on its Web site and in all promotional materials and advertisements. In accordance with proposed § 668.41(h)(6), the Department would not calculate a repayment rate for an institution whose cohort is based on fewer than 10 borrowers. An institution with 10 or more borrowers that receives a failing repayment rate will have the opportunity to appeal its rate if the institution demonstrates that it has a low participation rate under the Direct Loan program by applying, with slight modifications, the participation rate index calculation described in § 668.214(b)(1) that institutions may use to appeal a loss of eligibility due to high cohort default rates or placement on provisional certification. Consistent with the existing process, in calculating the participation rate index for the purposes of proposed § 668.41(h)(6), the institution would divide the number of students receiving a Direct Loan to attend the institution during a period of enrollment that overlaps any part of a 12-month period that ended during the six months immediately preceding the fiscal year for which the Department calculated the loan repayment rate, by the number of regular students enrolled at the institution on at least a half-time basis during any part of the same 12-month period. The resulting percentage would then be multiplied by 30 percent to yield a participation rate. A figure of 30 percent is used because that is the minimum cohort default rate that could precipitate a participation rate challenge. A participation rate equal to or less than 0.0625 for a fiscal year in which the Department has calculated a loan repayment rate would exempt the institution from having to deliver a loan repayment warning under proposed § 668.41(h).

Under proposed § 668.41(h)(3), for each fiscal year, the Secretary would calculate the loan repayment rate for a proprietary institution based on the cohort of borrowers whose Direct Loans entered repayment at any time during the fifth fiscal year prior to the most recently completed fiscal year. The percentage change between what we refer to as the "original outstanding balance (OOB)" (the amount owed, as defined more specifically in proposed § 668.41(h)(2)(ii), when the borrower enters repayment, including any accrued interest) and the "current outstanding balance" (including principal and both capitalized and uncapitalized interest) as of the end of the prior fiscal year for each borrower in the cohort would be calculated and expressed as a percentage reduction of, or increase in, the OOB. For any loan reported as being in default status at any time during the "measurement period" and where there is a percentage reduction of the original balance, the difference between the OOB and COB would be considered to be zero; and for any loan that defaulted and had a percentage increase from the original balance, the difference between the OOB and COB would be that percentage increase. "Measurement period" is defined in proposed § 668.41(h)(2)(iv) as the period of time between the date a borrower's loan enters repayment and the end of the fiscal year for which the current outstanding balance of that loan is determined. The OOB of a loan does not include PLUS loans made to parent borrowers, Perkins loans, or TEACH Grant-related loans. For consolidation loans, the OOB includes only those loans attributable to the borrower's enrollment in the institution. A median value is then determined on a scale where percentage reductions in original outstanding balance are positive values and percentage increases in original balance are negative values. The median value for all included borrowers at an institution is the institution's loan repayment rate for that year.

Proposed § 668.41(h)(4) would provide certain exclusions from the above calculation. The Secretary would exclude a borrower from the calculation if one or more of the borrower's loans were in a military deferment status during the last fiscal year of the measurement period; one or more of the borrower's loans are either under consideration by the Secretary, or have been approved, for discharge on the basis of the borrower's total and permanent disability under § 682.402 or § 685.213; the borrower was enrolled in an institution during the last fiscal year of the measurement period; or the borrower died.

In proposed § 668.41(h)(5), we describe the process by which the Department would notify an institution of its loan repayment rate, and provide the institution an opportunity to challenge that rate. Specifically, the Department would provide to each institution a list of students in the cohort as determined under proposed § 668.41(h)(3), the draft repayment rate for that cohort, and the information used to calculate the draft rate. The institution would have 45 days to challenge the accuracy of the information used to calculate the draft rate. After considering any challenges to the draft rate made by the institution, the Department would notify the institution of its final repayment rate and whether the institution must deliver a loan repayment warning to students.

Financial Protection Disclosure

Under proposed § 668.41(i), institutions that are required to provide financial protection, including an irrevocable letter of credit or cash under proposed § 668.175(d) or (f), or set-aside under proposed § 668.175(h), would have to disclose that status, which would include information about why the institution is required to provide financial protection, to both enrolled and prospective students until released from the obligation to provide financial protection by the Department.

Disclosures to Students

Under proposed § 668.41(h)(7), an institution that is subject to the loan repayment warning must provide that warning to prospective and enrolled students and place the warning on its Web site and in all advertising and promotional materials in a form and manner prescribed by the Department in a notice published in the **Federal Register**. Prior to publishing the notice, the Department would conduct consumer testing to improve the effectiveness of the warning language.

Under proposed § 668.41(h)(7), an affected institution would be required to provide the loan repayment warning to both enrolled and prospective students by hand delivering the warning as part of a separate document to the student individually or as part of a group presentation. Alternatively, an institution could send the warning to a student's primary email address or by another electronic communication method used by the institution for communicating with the student. In all cases, proposed § 668.41(h)(7) would require the institution to ensure that the warning is the only substantive content in the message, unless the Secretary specifies additional, contextual language to be included in the message. Institutions would be required to provide a prospective student with the warning before the student enrolls, registers, or enters into a financial obligation with the institution.

Proposed § 668.41(h)(8) would also require that all promotional and advertising materials prominently include the warning. Promotional materials include, but are not limited to, an institution's Web site, catalogs, invitations, flyers, billboards, and advertising on or through radio, television, print media, social media, or the Internet. Proposed § 668.41(h)(8) would further require that all promotional materials, including printed materials, about an institution be accurate and current at the time they are published, approved by a State agency, or broadcast.

Finally, an institution would, under proposed § 668.41(h)(9), be required to post the warning on the home page of the institution's Web site, in a simple and meaningful manner, within 30 days of the date the institution is informed by the Department of its final loan repayment rate. The warning must remain posted to the institution's Web site until the Department notifies the institution that it is no longer under a requirement to do so as a result of having a loan repayment rate greater than zero percent.

Under proposed § 668.41(i), an affected institution would be required to provide the financial protection disclosure to enrolled and prospective students in the manner described in proposed § 668.41(h)(7). An affected institution would also be required to post the disclosure on the home page of the institution's Web site in the manner described in proposed § 668.41(h)(9) no later than 30 days after the date on which the Secretary informs the institution of the need to provide financial protection, until such time as the Secretary releases the institution from the requirement that it provide financial protection.

Reasons: In deciding to enroll or continue attendance at any institution of higher education, students are making a substantial personal commitment that may mean incurring considerable amounts of student loan debt. Such a decision should, to the greatest extent possible, be an informed one. We believe that the warning related to loan repayment under proposed § 668.41(h) and the financial protection disclosure under § 668.41(i) would provide students with important information in making their educational and financial decisions.

Loan Repayment Rate

The loan repayment rate warning would provide enrolled and prospective students with valuable information about the repayment outcomes associated with the Federal student loan debt incurred by students who attend a proprietary institution. Zero percent or negative loan repayment rates indicate that borrowers at the institution are likely to have experienced financial distress as they attempted to repay their loans and may continue to experience difficulty. Loans in negative amortization status are viewed with concern.[37] Students who borrow to attend institutions should reasonably expect to be in a financial position that enables them to pay down their loans after leaving. Warning students of institutions with particularly low—zero percent or negative—repayment rates will give them critical information on which to base enrollment and borrowing decisions.

Based on internal analysis of data from the National Student Loan Data System (NSLDS), the typical borrower in negative amortization—more than half of those who have made no or negative repayment progress five years after leaving school—experienced long-term repayment hardship such as default. Those borrowers are especially unlikely to satisfy their loan debt in the long-term.[38] [39] In particular, we believe that it strikes an appropriate balance to measure repayment rates after five years, given that those data show that a substantial proportion of borrowers whose loans are in negative amortization five years after entering repayment remain in negative amortization or have defaulted on their loans 10 and even 15 years after entering repayment.

Several non-Federal negotiators expressed concerns about the additional administrative burden that would be associated with the proposed regulations. Several non-Federal negotiators argued that both the opportunity to review and correct data calculated by the Department, as well as the obligation to ensure the warnings are properly provided to all prospective and enrolled students, would add significant burden for those institutions. Some of those negotiators suggested that institutions should be able to satisfy the warning requirement by providing a link from the institution's Web site to the College Scorecard. Others recommended that the Department be responsible for the dissemination of loan repayment rates and associated warnings, perhaps through the Free Application for Federal Student Aid (FAFSA). Still others proposed the Department explore ways to limit the warning requirement only to those institutions that contribute most to negative repayment outcomes.

In response to suggestions that the Department assume responsibility for disseminating loan repayment rates, we believe that schools, as the primary and on-the-ground communicators with their students and the source of much of the information students receive about financial aid, are well placed to reach their students and to notify them of the potential risks of borrowing at that institution.

Nonetheless, we recognize the potentially increased administrative responsibilities attendant to the proposed requirement and agree with the negotiators who suggested minimizing administrative burden by applying this requirement only to the sector of institutions where the frequency of poor repayment outcomes is greatest. Analysis of repayment performance under the proposed methodology shows that zero and negative repayment outcomes are endemic to the proprietary sector, but are relatively rare in the public and non-profit sectors.[40] Proprietary institutions are far more likely to have poor repayment rates, along with lower post-college earnings and higher default rates, than public or non-profit institutions, and therefore pose the greatest risk to students and taxpayers.[41] [42] For instance, a preliminary Department analysis of the College Scorecard five-year undergraduate repayment rates (using a comparable threshold of 50 percent of borrowers or fewer making progress on their loans) shows that more than 70 percent of institutions with a repayment rate below the threshold are proprietary institutions, and those institutions represent more than two in five of all proprietary institutions. On the other hand, at both public and private nonprofit institutions, fewer than 10 percent of institutions had repayment rates below the threshold.[43] Based on this analysis, the financial risk to students is far more severe in the proprietary sector; so we propose to limit the burden of the warning requirement only to those institutions. Accordingly, the proposed warning requirement is tailored to address the sector in which these issues are most concentrated. By doing so, we would limit burden on postsecondary institutions generally and better target the Department's efforts to provide valuable consumer information.

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[37] Looney, Adam and Constantine Yannelis. "A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions They Attended Contributed to Rising Loan Defaults." Brookings Institution: *http://www.brookings.edu/~/media/projects/bpea/fall-2015/pdflooneytextfallbpea.pdf.*

[38] Borrowers in negative amortization would be considered to have a "negative repayment rate" under the proposed regulations.

[39] Analysis of NSLDS data was based on a statistical sample of three cohorts of borrowers with FFEL Loans and Direct Loans entering repayment in 1999, 2004, and 2009, respectively. The repayment statuses of the loans were tracked in five-year intervals at five, ten, and fifteen years after entry into repayment, depending on the age of the cohort.

Several non-Federal negotiators also expressed concerns about the methodology for calculating the repayment rate. One negotiator, commenting on how the cohorts for this proposed repayment rate are determined, objected to the use of a five-year horizon on the grounds that students progressing directly to graduate study following completion of an undergraduate degree may be shortly out of school and in forbearance or otherwise have accrued interest at the time of the calculation. Another negotiator expressed concerns that the proposed new methodology would be overly punitive toward institutions with historically underserved student populations, and that disclosure of resulting loan repayment rates would, to an unfair degree, reflect negatively on them.

While we appreciate the concerns and suggestions raised by negotiators, we maintain that the loan repayment rate methodology in proposed § 668.41(h)(3) results in a rate that would provide useful new information. Specifically, this rate would effectively identify the proprietary institutions that are generating zero or negative repayment outcomes and that should be providing warnings to students as they are assessing the likelihood of their ability to repay the loan debt they may incur for enrollment at a particular institution, based on the outcomes of former students who have already entered repayment. Other repayment rate methodologies, such as those used for the disclosures required under the Gainful Employment rule and College Scorecard, calculate the share of borrowers who have reduced their principal balance by at least one dollar. The rate proposed in this regulation would measure the extent to which students repaid their loans, identifying those proprietary institutions at which students are least likely to repay their loans in full. Moreover, the Department will look for ways to harmonize the multiple repayment rate methodologies, contingent on consumer testing and user needs.

We recognize that not all institutions present similar risk. Therefore, institutions with low numbers of borrowers and low borrowing rates are accordingly exempted from the proposed warning requirement. As discussed above, proposed § 668.41(h)(6) would exempt an institution from the warning requirement if its repayment rate is based on fewer than 10 borrowers who have entered repayment in the fiscal year; or if the institution demonstrates that it has a low participation rate under the Direct Loan program. The exemption for a repayment rate calculation based on fewer than 10 borrowers reflects the concern that individuals comprising so small a cohort might be able to be identified, potentially compromising the privacy of those individuals. We propose the low participation rate exemption in recognition that, if the number of students who borrow Direct Loans constitutes a small percentage of the institution's students, in some cases due to the institution's low tuition costs, the loan repayment outcomes of those students may not provide a full picture of student experiences at the institution.

Under the proposed calculation, borrowers who default at any point during the measurement period on their loans and who see a percentage reduction in their loan balances are treated as "zero" for the purposes of the repayment rate; borrowers who default and see a percentage increase in their loan balances are counted by the actual percentage increase. Given the significant impact that defaulting has on borrowers' financial circumstances, this provision is designed to ensure that institutions are held accountable for, and appropriate weight is placed on, those students' loan repayment outcomes.

In addressing the negotiators' concerns related to basing the cohort on a five-year horizon beyond the fiscal year when borrowers entered repayment, and the possibility that some students may still be enrolled in or have recently separated from school, we note that borrowers who are enrolled in an institution (either the same or another institution) at any time during the last fiscal year of the measurement period are excluded from the calculation. Even those students recently out of school and remaining in a forbearance status (having made no payments on their loans) would not be included unless their loans went into repayment at some time during the fifth prior fiscal year. We also believe that the other exceptions included in proposed § 668.41(h)(4) strengthen the accuracy of the rate.

Regarding concerns that proposed § 668.41(h) would unfairly target institutions whose enrollment is largely composed of underserved or economically disadvantaged populations, the Department holds that the requirement would not identify institutions on the basis that they enroll large numbers of underserved or economically disadvantaged populations. Rather, it would identify institutions at which borrowers on average are unable to repay their loans and accordingly pose a disproportionate risk to both students and taxpayers. Borrowers are responsible for managing debt payments, which begin shortly after they complete a program, even in the early stages of their career, and even if they come from economically disadvantaged backgrounds. As the U.S.

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[40] Analysis of NSLDS data was based on a cohort of borrowers with FFEL Loans and Direct Loans who entered repayment in 2009. The repayment status of loans taken out for attendance at each institution was observed five years after entry into repayment.

[41] The For-Profit Postsecondary School Sector: Nimble Critters Or Agile Predators? *www.nber.org/papers/w17710.pdf*; and Miller, Ben and Antoinette Flores. September 2015. Initial Analysis of College Scorecard Earnings and Repayment Data. *www.americanprogress.org/issues/higher-education/news/2015/09/17/121485/initial-analysis-of-college-scorecard-earnings-and-repayment-data/*.

[42] Looney, Adam and Constantine Yannelis. "A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions They Attended Contributed to Rising Loan Defaults." Brookings Institution: *http://www.brookings.edu/~/media/projects/bpea/fall-2015/pdflooneytextfallbpea.pdf*.

[43] Analysis of the Department's College Scorecard data was based on a combined cohort of borrowers with FFEL Loans and Direct Loans who entered repayment in 2008 and 2009. At schools where fewer than 50 percent of borrowers have repaid at least $1 on their loans (as is calculated using the Scorecard methodology), the median borrower has repaid nothing on his loans.

District Court for the District of Columbia stated in *Association of Private Sector Colleges & Universities* v. *Duncan,* 110 F.Supp.3d 176, 194 (D.D.C. June 23, 2015), "[W]hen graduates get low-paying jobs and then default on their student loans, nobody wins—not the government (which picks up the tab), and not the student (who may get back on her feet eventually, but who—in the meantime—may be denied credit, miss bill due dates, or even file for bankruptcy)." Indeed, the Department believes it is even more important to warn students from disadvantaged populations about the poor repayment outcomes of an institution at which they are considering enrolling because they will bear the same responsibility for managing their debt as everybody else.

One negotiator expressed concerns over the intended scope of the term "promotional materials" as now defined in proposed § 668.41(h)(8), pointing out that, at some large institutions, it would be difficult to put reasonable parameters around what might be considered promotional material. Other negotiators felt that the speed with which information about their institutions can be spread using social media, and the potential scale of dissemination, would make it impossible for them to ensure compliance with the proposed regulations.

Proposed § 668.41(h)(8)(ii) identifies the most commonly used methods to promote and advertise an institution, with the qualification that this list is not exhaustive and promotional materials are not limited to items on the list. We expect institutions to include the required warning in such other comparable media and formats in which they promote and advertise themselves. We invite comment on ways the Department can ensure that this warning, when included in promotional and advertising materials, is not hidden or presented in a way that makes it difficult for the public to see. Regarding the inclusion of social media as promotional material, we acknowledge the concerns related to potential burden and scope expressed by negotiators. To that end, we clarify here that it is not our intention for every "post" on a social media site or every individual "Tweet" to be considered promotional material. However, an institution's landing page on a social media platform is considered to be promotional material, as are any advertisements. On any social media profile/page that an institution maintains on such a platform, the institution would be required to include the warning.

Financial Protection

The proposed financial protection disclosure would provide enrolled and prospective students with valuable information about the viability of the institution as a participant in the Federal financial aid programs. Under proposed § 668.175(d), (f), or (h), some institutions would be required to provide financial protection, such as an irrevocable letter of credit, if the institution is not financially responsible because of an action or event described in proposed § 668.171(b) or (c). We believe that current and prospective students have a demonstrable interest in being made aware of the specific reasons for which their institution was required to provide any financial protection because these are factors that could have a significant impact on a student's ability to complete his or her education at an institution. For the thousands of students in recent years whose institutions have closed their doors precipitously, advance notice that those institutions faced significant financial risk and compliance issues could have allowed students time to reevaluate their decision to remain at an institution and choose to instead continue their education without interruption at an institution where the prospects for completing their education are more certain. We also believe that students are entitled to know about any such event that is significant enough to warrant disclosure to investors since students can have an equal, if not greater, financial stake in the continued operation of their institution.

Method of Delivery

These provisions are designed to ensure that students receive any required loan repayment rate warning or financial protection disclosure. The information we propose to require in the loan repayment rate warning and financial protection disclosure pertains to material and deeply concerning problems at an institution that create significant risk to the educational prospects of students enrolling or already enrolled at that institution. Students deserve to know information that could have a significant impact on or relate to their chances of success.

In addition to our interest in ensuring that students have accurate and complete information on which to base decisions about attending an institution, the Department has a significant interest in ensuring transparency more broadly. Recent events involving the closure of several large proprietary institutions have shown the need for lawmakers, regulatory bodies, State authorizers, taxpayers, and students to be more broadly aware of circumstances that could affect the continued existence of an institution. Though these additional disclosure requirements are not a singular remedy for this problem, we believe them to be an important step toward creating a more transparent environment in which institutions participate in the title IV, HEA programs.

Some negotiators objected to the lack of specificity with respect to the wording of the proposed warning. Our intent, however, is to build a certain amount of flexibility into the proposed regulations to ensure that the warning is as meaningful as possible to its intended audience. Accordingly, under proposed § 668.41(h)(7)(i), the Department would conduct consumer testing to help improve the effectiveness of the warning language. Upon completion of consumer testing, the final language would be published in the **Federal Register**. For illustrative purposes, we include examples of possible repayment rate warning language below:

- U.S. Department of Education Warning: A majority of borrowers at this school are not likely to repay their loans.
- U.S. Department of Education Warning: A majority of borrowers at this school have difficulty repaying their loans.
- U.S. Department of Education Warning: Most of the students who attended this school owe more on their student loans five years after leaving school than they originally borrowed.

During negotiated rulemaking, the Department proposed requiring institutions to deliver any loan repayment rate warning or financial protection disclosure to prospective students at the first contact with those students. Negotiators requested clarification of what is considered "first contact," believing it to be particularly difficult to establish at large institutions with which potential students regularly interact prior to enrolling. We agree with the negotiators that, in many cases, a point of first contact between an institution and a student may not be easy to isolate. Accordingly, we propose in § 668.41(h)(7)(iii) to state that an institution must provide the warning or disclosure required under this section to a prospective student before that student enrolls, registers, or enters into a financial obligation with the institution.

Initial and Final Decisions (§ 668.90)

Statute: Section 498(d) of the HEA provides that the Secretary is authorized to consider the past performance of an institution or of a person in control of an institution, in determining whether an institution has the financial capability to participate in the title IV, HEA programs. Section 487(c)(1)(F) of the HEA, 20 U.S.C. 1094(c)(1)(F), provides that the Secretary shall prescribe such regulations as may be necessary to provide for the limitation, suspension, or termination of the participation of an eligible institution in any program under title IV of the HEA.

Current Regulations: When the Department proposes to limit, suspend, or terminate a fully certified institution's participation in a title IV, HEA program, the institution is entitled to a hearing before a hearing official under § 668.90. In addition to describing the procedures for issuing initial and final decisions, § 668.90 also provides requirements for hearing officials in making initial and final decisions in specific circumstances.

These regulations generally provide that the hearing official determines whether an adverse action—a fine, limitation, suspension, or termination—is "warranted," but direct that in specific instances, the sanction must be imposed if certain predicate conditions are proven. For instance, in an action involving a failure to provide a surety in the amount specified by the Secretary under § 668.15, the hearing official is required to consider the surety amount demanded to be "appropriate," unless the institution can demonstrate that the amount was "unreasonable."

Further, § 668.90(a)(3)(v) states that, in a termination action brought on the grounds that the institution is not financially responsible under § 668.15(c)(1), the hearing official must find that termination is warranted unless the conditions in § 668.15(d)(4) are met. Section 668.15(c)(1) provides that an institution is not financially responsible if a person with substantial control over that institution exercises or exercised substantial control over another institution or third-party servicer that owes a liability to the Secretary for a violation of any title IV, HEA program requirements, and that liability is not being repaid. Section 668.15(d)(4) provides that the Secretary can nevertheless consider the first institution to be financially responsible if the person at issue has repaid a portion of the liability or the liability is being repaid by others, or the institution demonstrates that the person at issue in fact currently lacks that ability to control or lacked that ability as to the debtor institution.

Proposed Regulations: The Secretary proposes to amend § 668.90(a)(3)(iii) by substituting the terms "letter of credit or other financial protection" for "surety" in describing what an institution must provide to demonstrate financial responsibility. Additionally, § 668.90(a)(3)(iii) would be modified to require the hearing official to uphold the amount of the letter of credit or financial protection demanded by the Secretary, unless the institution demonstrates that the events or conditions on which the demand is based no longer exist or have been resolved in a manner that eliminates the risk they posed to the institution's ability to meet its financial obligations, or has now provided the required financial protection. We propose to further modify § 668.90(a)(3)(v) to list the specific circumstances in which a hearing official may find that a termination or limitation action brought for a failure of financial responsibility for an institution's past performance failure under § 668.174(a), or a failure of a past performance condition for persons affiliated with an institution under § 668.174(b)(1), was not warranted. For the former, revised § 668.90(a)(3)(v) would state that these circumstances would be compliant with the provisional certification and financial protection alternative in § 668.175(f). For the latter, the circumstances would be those provided in § 668.174(b)(2) or § 668.175(g).

Reasons: The proposed changes to § 668.90(a)(3)(iii) would update the regulations to reflect both the current language in § 668.175 and proposed changes to that section. The changes would also create specific conditions under which the hearing official may find that the letter of credit or financial protection amount demanded would not be warranted. We believe that the new language would provide more clarity than the current standard, which only notes that the institution has to show that the amount was "unreasonable." The proposed language would clearly establish that the amount would be unwarranted only if the reasons for which the Secretary required the financial protection no longer exist or have been resolved, or if some other acceptable form of financial protection arrangement is in place with the Secretary.

Our proposed revisions to § 668.90(a)(3)(iii) would reflect previous, as well as proposed, changes to the financial responsibility standards. First, the current financial responsibility standards in § 668.175 require an institution in some instances to provide a letter of credit in order to be financially responsible. We propose to modify § 668.90(a)(3)(iii) to reflect that language as well as changes proposed now to § 668.175 by substituting the terms "letter of credit or other financial protection" for "surety." Thus, the proposed changes to § 668.90 would clarify that a limitation, suspension, or termination action may involve a failure to provide any of the specified forms of financial protection, letter of credit or otherwise.

We further propose to modify § 668.90(a)(3)(iii) to state the specific grounds on which a hearing official may find that a limitation or termination action for failure to provide financial protection demanded is not warranted. The proposed change would provide that a hearing official must adopt the amount of the letter of credit or financial protection demanded by the Secretary, unless the institution demonstrates that the events or conditions forming the grounds for the financial protection or letter of credit no longer exist or have been resolved in a manner resolving the risk posed to the institution's ability to meet its financial obligations. The institution would be permitted to demonstrate that the Department miscalculated the amount on which the demand is grounded. However, it could not claim that the event does not constitute grounds for a demand for financial protection or that the amount demanded is unreasonable based on the institution's assessment of the risk posed by the event or condition. The institution could challenge a demand for protection based on delinquency on secured debt by proving that the delinquency has been cured or a workout satisfactory to the secured lender has been arranged. In the case of a demand for financial protection based on pending litigation, the institution would be permitted to demonstrate that the suit was dismissed or settled favorably. Alternatively, the institution could demonstrate that it has provided the Department with appropriate alternative financial protection (cash or a reimbursement funding arrangement with the Secretary that will result in set-aside of the amount required within an agreed timeframe).

The proposed changes to § 668.90(a)(3)(v) would also clarify and conform with other existing regulations the alternative methods in current regulations by which an institution may be able to meet the financial responsibility standards, and thus would be able to claim that a limitation or termination is unwarranted. Section 668.90(a)(3)(v) would be revised to state the grounds on which a hearing official is authorized to find that a termination or limitation action brought for a failure of financial responsibility for an institution's failure of a past performance condition under § 668.174(a) or a failure of a past performance condition for persons affiliated with an institution under § 668.174(b)(1) was not warranted. None of these provisions would be changed under these proposed regulations. The changes would not add substantive new restrictions, but simply conform § 668.90 to these substantive requirements already in current regulations. Thus, as revised, § 668.90(a)(3)(v) would require the hearing official to find that the limitation or termination for adverse past performance by the institution itself was warranted, unless the institution met the provisional certification and financial protection alternative in current § 668.175(f). For an action based on adverse past performance of a person affiliated with an institution, the hearing official would be required to find that limitation or termination of the institution was warranted unless the institution demonstrated either proof of repayment or that the person asserted to have substantial control in fact lacks or lacked that control, as already provided in § 668.174(b)(2), or the institution has accepted provisional certification and provided the financial protection required under § 668.175(g).

Limitation (§ 668.93)

Statute: Section 487(c)(1)(F) of the HEA, 20 U.S.C. 1094, provides that the Secretary shall prescribe such regulations as may be necessary to provide for the limitation, suspension, or termination of an eligible institution's participation in any program under title IV of the HEA.

Current Regulations: Section 668.86 provides that the Secretary may limit an institution's participation in a title IV, HEA program, under specific circumstances, and describes procedures for a challenge to such a limitation. Current § 668.93 lists types of specific restrictions that may be imposed by a limitation action, and includes in paragraph (i) "other conditions as may be determined by the Secretary to be reasonable and appropriate." 34 CFR 668.93(i).

Although a change in an institution's status from fully certified to provisionally certified is not currently a limitation listed in § 668.93, § 668.13(c) provides that the Secretary may provisionally certify an institution whose participation has been limited or suspended under subpart G of part 668, and § 668.171(e) provides that the Secretary may take action under subpart G to limit or terminate the participation of an institution if the Secretary determines that the institution is not financially responsible under the provisions of § 668.171 or § 668.175.

Proposed Regulations: The Secretary proposes to amend § 668.93 to clarify that a change in an institution's participation status from fully certified to provisionally certified to participate in a title IV, HEA program under § 668.13(c) is a type of limitation that may be the subject of a limitation proceeding under § 668.86.

Reasons: The proposed change to § 668.93 would clarify current policy and provide for a more complete set of limitations covered in § 668.93.

Pay As You Earn (PAYE) and Revised Pay As You Earn (REPAYE) Repayment Plans (§ 685.209(a) and (c))

Statute: Section 455(d)(1)(D) of the HEA authorizes the Secretary to offer Direct Loan borrowers (except parent PLUS borrowers) an income-contingent repayment (ICR) plan with varying annual repayment amounts based on the income of the borrower, for a period of time prescribed by the Secretary, not to exceed 25 years. Section 455(e)(1) of the HEA authorizes the Secretary to establish ICR plan repayment schedules through regulations.

Current Regulations: For the PAYE Plan and the REPAYE Plan, current § 685.209(a)(1)(ii) and (c)(1)(ii), respectively, define "eligible loan" as "any outstanding loan made to a borrower under the Direct Loan Program or the FFEL Program except for a defaulted loan, a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower, or a Direct Consolidation Loan or Federal Consolidation Loan that repaid a Direct PLUS Loan or Federal PLUS Loan made to a parent borrower."

For the REPAYE Plan, current § 685.209(c)(2)(ii)(B) provides that if a married borrower and the borrower's spouse each have eligible loans, the Secretary adjusts the borrower's REPAYE Plan monthly payment amount by determining each individual's percentage of the couple's total eligible loan debt and then multiplying the borrower's calculated REPAYE Plan monthly payment amount by this percentage.

For the REPAYE Plan, current § 685.209(c)(4)(iii)(B) specifies that the annual notification to a borrower of the requirement to provide updated income and family size information explains the consequences, including the consequences described in § 685.209(c)(4)(vi), if the Secretary does not receive the information within 10 days following the annual deadline specified in the notification. Paragraph (c)(4)(vi) of § 685.209 provides that if the Secretary removes a borrower from the REPAYE Plan because the borrower has failed to provide updated income information by the specified deadline, the Secretary sends the borrower a written notification containing the borrower's new monthly payment amount and providing other information, including the borrower's option to change to a different repayment plan and the conditions under which the borrower may return to the REPAYE Plan.

Proposed Regulations: The proposed regulations make technical changes to amend § 685.209(a)(1)(ii) of the PAYE Plan regulations by adding language to the definition of "eligible loan" stating that this term is used for purposes of determining whether a borrower has a partial financial hardship and adjusting the monthly payment amount for certain married borrowers. The definition of "eligible loan" in § 685.209(c)(1)(ii) of the REPAYE Plan regulations would be amended by adding language stating that this definition is used for purposes of adjusting the monthly payment amount for certain married borrowers.

The proposed regulations would amend § 685.209(c)(2)(ii)(B) of the REPAYE Plan regulations by adding language to provide that there is no adjustment to a married borrower's monthly payment amount based on the eligible loan debt of the borrower's spouse if the spouse's income is excluded from the calculation of the borrower's monthly payment amount in accordance with § 685.209(c)(1)(i)(A) or (B).

The proposed regulations would revise § 685.209(c)(2)(v) of the REPAYE Plan regulations by removing language that refers to the Secretary's determination that the borrower does not have a partial financial hardship. Finally, the proposed regulations also would revise § 685.209(c)(4)(iii)(B) of the REPAYE Plan regulations by removing the cross-reference to § 685.209(c)(4)(vi).

Reasons: The language that would be added to the definitions of "eligible loan" in the PAYE and REPAYE plan regulations is intended to clarify that the inclusion of certain types of FFEL Loans in the definitions of "eligible loan" does not mean that these loans may be repaid under the PAYE or REPAYE plans. The PAYE and REPAYE plans are available only for Direct Loans. The proposed language would clarify that the FFEL Loans listed in the definitions are taken into consideration only for certain purposes related to the terms and conditions of the PAYE and REPAYE plans.

The proposed change in § 685.209(c)(2)(ii)(B) is needed to accurately reflect that the monthly payment amount for a married borrower who files a separate Federal income tax return from his or her spouse is not adjusted to take into account the spouse's eligible loan debt if the spouse's income is excluded from the calculation of the borrower's monthly payment amount in accordance with § 685.209(c)(1)(i)(A) or (B). Paragraphs (c)(1)(i)(A) and (B) provide that only the borrower's income is used to calculate the monthly REPAYE Plan payment amount if a married borrower filing separately is separated from his or her spouse or is unable to reasonably access the spouse's income information.

The proposed change in § 685.209(c)(4)(iii)(B) removes an unnecessary reference to the requirement for the annual notification informing a borrower of the need to recertify income and family size to provide information about the contents of a separate notification required under § 685.209(c)(4)(vi) that will be sent if the borrower is removed from the REPAYE Plan as a result of failure to recertify income. The information included in that separate notification is not applicable at the time a borrower is merely being notified of the requirement to annually recertify income and family size.

The removal of the reference to partial financial hardship in § 685.209(c)(2)(v) reflects that the concept of partial financial hardship does not apply under the terms and conditions of the REPAYE Plan.

False Certification Discharges (§ 685.215)

Statute: Section 437(c) of the HEA provides for the discharge of a borrower's liability to repay a FFEL Loan if the student's eligibility to borrow was falsely certified by the school. The false certification discharge provisions also apply to Direct Loans, under the parallel terms, conditions, and benefits provisions in section 455(a) of the HEA. Section 484(d) of the HEA specifies the requirements that a student who does not have a high school diploma or a recognized equivalent of a high school diploma must meet to qualify for a title IV, HEA loan.

Current Regulations: Section 685.215(a)(1)(i) provides that a Direct Loan borrower may qualify for a false certification discharge if the school certified the eligibility of a borrower who was admitted on the basis of the ability to benefit but the borrower did not in fact meet the eligibility requirements in 34 CFR part 668 and did not meet the eligibility requirements in section 484(d) of the HEA. Section 685.215(a)(1)(iii) provides that a borrower may qualify for a false certification discharge if the school certified the eligibility of a student who would not meet requirements for employment in the occupation for which the training program supported by the loan was intended due to a physical or mental condition, age, criminal record, or other requirement accepted by the Secretary that was imposed by State law. Section 685.215(c) and (d) describes the qualifications and procedures for receiving a false certification discharge.

Proposed Regulations: Proposed § 685.215(a)(1)(i) would eliminate the reference to "ability to benefit" and specify that a borrower qualifies for a false certification discharge if the borrower reported not having a high school diploma or its equivalent and did not satisfy the alternative to graduation from high school requirements under section 484(d) of the HEA.

Under proposed § 685.215(a)(1)(ii), if a school certified the eligibility of a borrower who is not a high school graduate (and does not meet applicable alternative to high school graduate requirements) the borrower would qualify for a false certification discharge if the school falsified the borrower's high school graduation status; falsified the borrower's high school diploma; or referred the borrower to a third party to obtain a falsified high school diploma.

Proposed § 685.215(a)(1)(iv) would specify that a borrower qualifies for a false certification discharge if the borrower failed to meet applicable State requirements for employment due to a physical or mental condition, age, criminal record, or other reason accepted by the Secretary that would prevent the borrower from obtaining employment in the occupation for which the training program supported by the loan was intended.

Proposed § 685.215(c) would update the information specifying how a borrower applies for a false certification discharge. It would also specify that the Department would notify a borrower who applies but does not meet the requirements for a false certification discharge and explain why the borrower does not meet the requirements.

Proposed § 685.215(c)(1) would describe the requirements a borrower must meet to qualify for a discharge due to a false certification of high school graduation status.

Proposed § 685.215(c)(2) would state the requirements a borrower must meet to obtain a discharge based on a disqualifying condition, as specified in proposed § 685.215(a)(1)(iv).

Proposed § 685.215(c)(8) would amend the provisions for granting a false certification discharge without an application to include cases in which the Department has information in its possession showing that the school has falsified the Satisfactory Academic Progress (SAP) of its students.

Proposed § 685.215(d) would update the procedures for applying for a false certification discharge, and describe the types of evidence that the Department uses to determine eligibility for a false certification discharge. It would also provide that the Department will explain to the borrower the reasons for a denial of a false certification discharge claim, describe the evidence that the determination was based on, and provide the borrower with an opportunity to submit additional evidence supporting his or her claim. The Department would consider the response from the borrower, and notify the borrower whether the determination of eligibility has changed.

Reasons: We propose to remove the "ability to benefit" language from § 685.215(a)(1)(i) because there is no longer a statutory basis for certifying the eligibility of non-high school graduates based on an "ability to benefit." Currently section 484(d) of the HEA establishes different standards under which a non-high school graduate may qualify for title IV aid. We believe that it is preferable to refer to section 484(d) of the HEA by cross-reference, rather than incorporate the statutory language in the regulations, so that any future changes to that language would be incorporated into the regulation. The changes we propose to make to § 685.215(c)(1) (currently titled "Ability to benefit") are intended to conform to these changes.

The proposed revisions to § 685.215(a)(1)(i) and (ii) are intended to state more explicitly that a school's certification of eligibility for a borrower who is not a high school graduate, and does not meet the alternative to high school graduate requirements, is grounds for a false certification discharge. We propose these changes specifically to address the problem of schools encouraging non-high school graduates to obtain false high school diplomas to qualify for Direct Loans. Many non-Federal negotiators noted that often borrowers are misled by schools. These non-Federal negotiators stated that some schools tell borrowers that a high school diploma is not a requirement for title IV student aid, or that the borrower will be able to earn a high school diploma through the program for which the borrower is taking out the student loan, so the borrower should answer "Yes" to the high school graduation question on the FAFSA. Non-Federal negotiators stated that some schools encourage borrowers to obtain the services of a third party that will provide them with what appears to be a legitimate high school diploma. These borrowers often do not understand that the "high school diploma" provided by the third party is worthless. Many non-Federal negotiators were supportive of the Department's efforts to provide relief for borrowers who have been victimized in this way. Some of the non-Federal negotiators, while supportive of this proposal, noted that borrowers themselves may provide false information to the schools regarding the borrower's high school graduation status. Unless the school investigates the borrower's claim to be a high school graduate, for instance by requesting transcripts, which are harder to falsify, the school may unknowingly falsely certify the borrower's eligibility.

To address these situations, the Department proposed during the negotiated rulemaking to include the requirement in proposed § 685.215(a)(1)(i)(A) that the borrower "reported" not having a high school diploma or its equivalent. If the borrower informed the school that the borrower was not a high school graduate, and the borrower also did not satisfy the alternative to high school graduation eligibility criteria, but the school still certified the borrower's eligibility for title IV aid, the borrower would qualify for a false certification discharge.

Under proposed § 685.215(a)(1)(ii), a borrower would qualify for a false certification discharge if the borrower was not a high school graduate, and the school certified the borrower's eligibility based on falsified high school graduation status or based on a high school diploma falsified by the school or a third party to which the school referred the borrower. The reference in proposed § 685.215(a)(1)(ii)(B) to cases in which a school refers a borrower to a third party to obtain a false high school diploma would not refer only to a formal referral relationship between the school and the third party. An informal relationship involving any level of contact between the school and the third party would also qualify under the proposed regulations. A school would be considered to have "referred the borrower" to the third party in any instance in which the school advised or encouraged a borrower to obtain a false high school diploma from the third party.

The proposed revision to § 685.215(a)(1)(iv) would clarify that this section refers to a situation in which a borrower failed to meet State requirements for employment in the occupation for which the training program was supported or the loan was intended. These State requirements would not necessarily have to be imposed by State statutes; they could be requirements established through State regulations or other limitations established by the State. The Department considered using other employment standards, such as Federal standards, or standards established by non-governmental professional associations. However, we were unable to find examples of Federal standards for particular professions, other than standards specifically for employment in the Federal government. The Department believes that employment standards established by professional associations could vary, and that it would not be practical to require schools to determine which professional association standards to use.

Some of the non-Federal negotiators recommended including limited English proficiency (LEP) as one of the characteristics that would disqualify a borrower from working in a particular profession and serve as the basis for a false certification loan discharge. We reviewed this proposal, but determined that it would not be practical to determine a borrower's English language proficiency at the time the borrower enrolled in the program. While a student's score on the Test of English as a Foreign Language (TOEFL) is a generally accepted indicator of English language proficiency, many schools do not administer this test, the TOEFL is not required for all academic programs, and the scores required to demonstrate sufficient proficiency differ between schools. Moreover, the TOEFL is not intended to measure an individual's language proficiency for any particular profession.

Non-Federal negotiators recommended that the Department require schools to certify an LEP student's ability to successfully complete a postsecondary program by either administering an evaluative test such as the TOEFL; providing the student with complete instruction, instructional materials, and exams in her or his native language; or providing specific and sufficient accommodation through an approved English as a Second Language component. The Department expressed concern that such a limitation could impede access to postsecondary education for some LEP students. The Department also noted that certification of LEP students for Direct Loans does not constitute false certification of eligibility for title IV, HEA program funds. Non-Federal negotiators recommended that false certification discharge apply in cases in which an LEP student is enrolled in a program for a profession that requires English proficiency, or an LEP student is told that instruction will be offered in the student's first language or that the student will be provided English as a Second Language courses, but after the student takes out a Direct Loan and enrolls, no such instruction is provided. However, the Department noted that these are examples of misrepresentation, which would fall under the borrower defenses regulations.

Current § 685.215(c) requires the borrower to submit a "written request and a sworn statement" to apply for a false certification discharge. We propose replacing this language with a requirement for a borrower to submit an application for discharge on "a form approved by the Secretary," which more accurately reflects current practice. The proposed changes to redesignated § 685.215(c)(8) would add, as an example of information that the Department may use to grant a false certification discharge without an application, evidence that a school has falsified the SAP of its students. Although the Department may already do this under the language in current § 685.215(c)(7), we believe that it is helpful to specifically address such cases in the regulatory language. This change would put schools on notice that, if the Department learns of a school falsifying SAP through a program review or an audit, the Department has the authority to independently grant false certification discharges to affected borrowers at that school.

Some of the non-Federal negotiators recommended that we also allow an individual borrower to apply for a false certification discharge if the borrower believes that the school falsified the borrower's SAP. We examined this proposal, and determined that it would be impractical. Schools have a great deal of flexibility both in determining and implementing SAP standards. There are a number of exceptions under which a borrower who fails to meet SAP can continue to receive title IV loans. As one of the non-Federal negotiators pointed out, borrowers who are in danger of losing title IV eligibility due to the failure to meet SAP standards often request reconsideration of the SAP determination. Schools often work with borrowers in good faith efforts to attempt to resolve the situation without cutting off the borrowers' access to title IV assistance. We do not believe that a school should be penalized for legitimate attempts to help a student who is having difficulty meeting SAP standards, nor do we believe a student who has successfully appealed a SAP determination should then be able to use that initial SAP determination to obtain a false certification discharge of his or her student loans. In addition, we believe it would be very difficult for an individual borrower to sufficiently demonstrate that a school violated its own SAP procedures. Given these considerations, we propose to limit false certification discharges based on falsification of SAP to discharges based on "information in the Secretary's possession." Such information would include, for example, findings from program reviews, audits, or other investigations.

The proposed revisions to § 685.215(d)(3) would provide more transparency to the process for granting false certification discharges. For example, under proposed § 685.215(d)(3), when the Department denies a false certification discharge request, we would explain the reasons for the denial to the borrower, provide the borrower with the evidence that the decision was based on, and provide the borrower the opportunity to provide additional information which the Department would evaluate. This proposed new language was suggested by one of the non-Federal negotiators, and was generally supported by all of the members of the negotiating committee.

In addition to the revisions that we are proposing in this NPRM, the non-Federal negotiators submitted recommendations to the Department for additional revisions to the false certification regulations. These included recommendations to extend the revisions to the FFEL regulations as well as the Direct Loan regulations; to allow false certification discharges in cases when a program that the borrower is enrolled in fails to meet title IV eligibility requirements (although the program was participating in the title IV, HEA programs at the time the loan was made); and to require active confirmation when a school notifies a borrower that an additional loan was made under the borrower's previously executed Master Promissory Note (MPN), to address issues of possible forgery of electronic signatures on an MPN.

The Department declined to accept these recommendations. We are not proposing to extend the revisions to the FFEL Program because no new loans are being made in the FFEL Program, and we cannot apply these changes retroactively.

False certification discharges are based on a school falsely certifying a borrower's eligibility. They do not apply in instances that do not concern a personal characteristic or qualification of the borrower, such as ineligibility of the school or the program offered by the school. See 59 FR 22469 (April 28, 1994).

The recommendations regarding active confirmation and use of the MPN relate more to the way Direct Loans are awarded and disbursed than to the false certification requirements, and go beyond the scope of this regulatory action.

Direct Consolidation Loans (§ 685.220)

Statute: Section 455(g) of the HEA provides that the loan types listed in section 428C(a)(4) may be consolidated into a Direct Consolidation Loan. Section 428C(a)(4)(E) of the HEA provides that loans made under part E of title VIII of the Public Health Service Act are eligible to be consolidated into a Federal Consolidation Loan under the FFEL Program. Loans made under part E of title VIII of the Public Health Service Act include both Nursing Student Loans and Nurse Faculty Loans.

Current Regulations: Current § 685.220(b)(21) specifies that nursing loans made under subpart II of part B of title VIII of the Public Health Service Act may be consolidated into a Direct Consolidation Loan.

Current § 685.220(d)(1)(i) states that a borrower may obtain a Direct Consolidation Loan if the borrower consolidates at least one Direct Loan or FFEL Loan. If the borrower has certain other eligible loan types such as a Perkins Loan or a loan issued by the U.S. Department of Health and Human Services (HHS), the borrower can only include these loans in a Direct Consolidation Loan if the borrower also includes at least one Direct or FFEL loan. Under § 685.220(b), loans issued by HHS that may be consolidated into a Direct Consolidation Loan, if the borrower also includes at least one Direct or FFEL loan, include Health Professions Student Loans (HPSL), and Loans for Disadvantaged Students (LDS), made under subpart II of part A of title VII of the Public Health Service Act, Health Education Assistance Loans (HEAL), and Nursing Loans made under subpart II of part B of title VII of the Public Health Service Act.

Proposed Regulations

Consolidation of Nursing Loans

The proposed regulations would revise § 685.220(b)(21) to provide that nursing loans made under part E of title VIII of the Public Health Service Act may be consolidated into a Direct Consolidation Loan.

Consolidation of Eligible Loans

We propose to remove current § 685.220(d)(1)(i) to eliminate the requirement that a borrower must consolidate at least one FFEL or Direct Program Loan. This would allow a borrower to consolidate under the Direct Loan Program, if the borrower had any of the eligible loans listed in § 685.220(b).

Reasons

Consolidation of Nursing Loans

The proposed change is needed to conform § 685.220(b)(21) to the statutory language in section 428C(a)(4)(E) of the HEA, which allows for the consolidation of both Nursing Student Loans and Nurse Faculty Loans. The current regulatory reference to nursing loans "made under subpart II of part B of title VIII of the Public Health Service Act" includes Nursing Student Loans, but not Nurse Faculty Loans. The current regulatory language reflects earlier statutory language that was subsequently amended.

Consolidation of Eligible Loans

The proposed change to remove current § 685.220(d)(1)(i) would eliminate the requirement that a borrower must have a Direct Program or FFEL loan to consolidate. As a result, other loan types listed in § 685.220(b), such as Perkins Loans and certain loans issued by HHS, would also be allowed to access consolidation, even if the borrower did not also consolidate a Direct Program or FFEL loan.

The proposed change is necessary to be consistent with sections 451(b)(2) and 455(a)(1) of the HEA, which provide that, unless otherwise specified, Direct Loans are to have the same terms, conditions, and benefits as FFEL Loans. 20 U.S.C. 1087a(b), 1087e(b)(1). Under the FFEL Program, certain loans issued by HHS (HPSL, LDS, HEAL, and Nursing loans) and Federal Perkins loans were considered eligible student loans for consolidation, without any added requirement that the borrower also consolidate at least one FFEL Loan. 20 U.S.C. 1078–3(a)(4)(B), (D); 34 CFR 682.100(a)(4). The authority for lenders to make FFEL Consolidation Loans expired on June 30, 2010, under section 428C(e) of the HEA, 20 U.S.C. 1078–

3(e). Since current § 685.220(d)(1)(i) does not allow Federal Perkins loan borrowers and borrowers of loans issued by HHS as listed in § 685.220 to obtain a Direct Consolidation Loan, unless they also consolidate either a Direct or FFEL loan, Federal Perkins and HHS student loan borrowers who do not also have at least one Direct Loan or FFEL Loan do not currently have access to consolidation. As a result, these borrowers are not receiving the same terms, conditions and benefits in the Direct Loan program as in the FFEL Program.

To correct this situation, the Department proposes to allow borrowers to obtain a Direct Consolidation Loan regardless of whether the borrower is also seeking to consolidate a Direct Program or FFEL loan, if the borrower has a loan type identified in § 685.222(b).

Agreements Between an Eligible School and the Secretary for Participation in the Direct Loan Program (§ 685.300)

Statute: Section 454(a)(6) of the HEA, 20 U.S.C. 1087d(a)(6), provides that schools enter into Direct Loan Participation Agreements that include provisions needed to protect the interests of the United States and promote the purposes of the Direct Loan Program.

Current Regulations: Section 685.300 states the requirements for a school to participate in the Direct Loan Program. First, the school must meet the requirements for eligibility under the HEA and applicable regulations. Second, the school must enter into a written program participation agreement with the Secretary. Under the agreement, the school agrees to comply with the HEA and applicable regulations. Paragraph (b) of § 685.300 lists several specific provisions of the program participation agreement.

Proposed Regulations: Proposed § 685.300(d), (e), (f), (g), (h) and (i) would add specific provisions to the Direct Loan program participation agreement related to student claims and complaints based upon acts or omissions[44] of a school that are related to the making of a Federal loan or the provision of educational services for which the loan was provided and that could also form the basis of borrower defense claims under § 685.206(c) or proposed § 685.222.

Specifically, proposed § 685.300(d), (e), (f), (g), (h) and (i) would provide that—

- A school may not require any student to pursue a complaint based on such acts or omissions through an internal institutional process before the student presents the complaint to an accrediting agency or government agency authorized to hear the complaint;
- The school may not obtain or attempt to enforce a waiver of or ban on class action lawsuits regarding borrower defense-type claims;
- The school may not compel the borrower to enter into a pre-dispute agreement to arbitration of a borrower defense-type claim, or attempt to compel a borrower to arbitrate such a claim by virtue of an existing a pre-dispute arbitration agreement;[45] and
- The school must notify the Secretary of the initial filing of such a claim, whether in arbitration or in court, and must provide copies of the initial filing, certain subsequent filings, and any decisions on such claims.

Reasons: Through this rulemaking, the Department is proposing to address the procedures to be used for a borrower to establish a borrower defense based on acts or omissions of a school related to the making of a Direct Loan or the provision of educational services for which the Direct Loan was provided, and the effect of borrower defenses on institutional capability assessments, among other things. 80 FR 63479. For disputes involving claims that may be potential borrower defenses, we propose to add to the Direct Loan program participation agreement provisions relating to schools' current use of certain dispute resolution procedures. For the reasons explained here, these procedures, individually and collectively, can:

- Affect whether institutions are held accountable for the acts and omissions that give rise to borrower defense claims;
- Make it more likely that the costs of losses from those acts or omissions will be passed on to the taxpayer;
- Reduce the incentive for institutions to engage in fair and ethical business practices rather than practices that give rise to borrower defense claims; and
- Frustrate or reduce the effectiveness of the Department's proposed processes for submitting and determining the validity of borrower defense claims.

Accordingly, proposed § 685.300(d) through (i), individually and collectively, are designed to help ensure that the proposed borrower defense and institutional accountability regulations will achieve their intended goals—to protect students, the Federal government, and taxpayers against risks from potential borrower defenses and potential school liabilities.

We believe that to protect students, taxpayers, and the Federal government from the risk of loss arising from borrower defense claims based on the acts or omissions of the school, financial responsibility for these risks should be placed on the party whose conduct gives rise to the risk. To do so, borrowers must be free to present these claims to an authority well-situated to consider the merits of their claims and provide effective recourse directly against the school. Accordingly, we propose regulatory changes to § 685.300 that would support these objectives in separate but complementary ways. In each case, the proposed regulations would enhance the opportunities for borrowers with borrower defenses to obtain relief directly from schools and help ensure that schools are held accountable for their acts or omissions that give rise to borrower defenses.

Specifically, for Direct Loan participants, we propose to:

- Prohibit the use of class action waivers in order to, among other things, permit the aggregation of claims that may reflect widespread wrongdoing for which institutions might not otherwise be held accountable;
- Bar the use of mandatory pre-dispute arbitration agreements, in order to, among other things, prevent institutions from suppressing individual student complaints and shifting the financial risk associated with institutional wrongdoing to the Department and the taxpayers;
- Require institutions to modify existing arbitration agreements or notify individuals who have already executed arbitration agreements that the institution will not attempt to enforce an existing arbitration agreement in a manner prohibited by the regulations; and
- Require institutions to inform the Secretary of the assertion and resolution of potential borrower defense claims to enable the Secretary to monitor compliance with these requirements, to assess the nature and incidence of acts or omissions that form the grounds on which claims are asserted, to better focus corrective or enforcement actions, and to disseminate useful information about the nature and frequency of such

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[44] Unless otherwise noted, we use the phrases "borrower defense-type claims" or "potential borrower defenses" to refer to such complaints or disputes.

[45] Unless otherwise noted, we use the phrase "pre-dispute arbitration agreement" to refer to agreements providing for arbitration of any future disputes between the parties, regardless of the label given the agreement, its form or its structure. These could take the form of stand-alone agreements, as well as such an agreement that is included within, annexed to, incorporated into, or otherwise made a part of a larger agreement between the parties.

claims and the judicial and arbitral outcomes of these claims.

We further propose in § 685.300(d), regarding exhaustion of internal complaint procedures, to prohibit the school from requiring or attempting to require students to exhaust a school's internal complaint process before contacting or communicating a grievance with the school's accreditor or government agencies—including this Department—with authority over the school.

In proposing these regulatory changes, the Department is responding to comments made during negotiated rulemaking by the public and by non-Federal negotiators, and to a proposal submitted by a negotiator, which was supported by a number of other negotiators, in each case relating to the use of arbitration by schools. Proposals the Department received both from non-Federal negotiators and from the public on this issue are available at *www2.ed.gov/policy/highered/reg/hearulemaking/2016/index.html.*

During the negotiated rulemaking, we sought comment on two alternative options. Both options would bar the use of any pre-dispute arbitration agreements that include a waiver of the student's right to bring or participate in a class action lawsuit for claims that would constitute borrower defenses within the scope of § 685.206(c) and proposed § 685.222—in other words, claims related to the making of the Direct Loan or the provision of educational services for which the loan was intended. Both options would also require the school to submit copies of initial filings of any such claims and each ruling, award, or decision on the claims to the Secretary. Proposed Option A would prohibit schools from requiring students to pursue complaints, grievances, or disputes for such claims through an internal complaint process before presenting the complaint, grievance or dispute to an accrediting agency or government agency. Option A would allow the school to require the arbitration of claims asserted in a class action only if a court were to deny class certification or dismiss the class claims. This option would further require schools to ensure that the arbitration included certain procedural protections to increase the transparency and fairness of the arbitration proceeding. Option B would include provisions regarding class action waivers and submission of filings to the Secretary described above, but would only have barred the use of pre-dispute arbitration agreements.

Nearly all of the negotiators supported the proposed Option B. Many negotiators stated that by requiring students to arbitrate disputes, arbitration clauses function to suppress meritorious student complaints. They also noted that many schools' arbitration agreements contain confidentiality clauses. Since arbitration records are not public like court records, the negotiators noted that potential student claimants and their representatives generally may not have access to prior pleadings, awards, or arbitrator decisions. Negotiators also noted that many school enrollment agreements contain bans on class claims or have provisions with that effect, which prevents evidence of widespread patterns and unlawful practices to come to the attention of students, the public, and the Department. One negotiator, however, stated that the Department's proposal was outside the notice of issues to be considered, and thus beyond the scope of the issues for the rulemaking, and was concerned that neither proposed Option A or Option B fit within the U.S. Supreme Court precedent regarding arbitration. However, the negotiator stated that of the two proposed options, Option B was preferred.

As opposed to the options that were proposed by the Department at the negotiated rulemaking, in this NPRM, the Department proposes adding provisions that we believe would similarly prevent schools' use of internal complaint processes as a barrier to students' communication of such issues to accreditors or government agencies; ban the use of class action waivers by schools for potential borrower defense claims; prohibit mandatory pre-dispute arbitration agreements; and create transparency regarding the conduct and outcomes of arbitration proceedings. After evaluating the available research on arbitration and the concerns of all of the negotiators at the table, the Department has chosen to propose a modified version of Option B in this NPRM.

The Direct Loan Program Participation Agreement

The Department proposes to add provisions addressing the use of class action waivers, pre-dispute arbitration agreements, submission of filings, and internal complaint processes to the Direct Loan program participation agreements. Section 452(b) of the HEA states, "No institution of higher education shall have a right to participate in the [Direct Loan] programs authorized under this part [part D of title IV of the HEA]." 20 U.S.C. 1087b(b). Rather, an institution may participate only by supplying an application containing "such information and assurances as the Secretary may require." 20 U.S.C. 1087c(b)(1). Further, section 454 of the HEA directs that a school may participate in the Direct Loan Program only by virtue of a "participation agreement." 20 U.S.C. 1087d. Section 454 further states that such program participation agreement shall include, among other things, "such other provisions as the Secretary determines are necessary to protect the interests of the United States and promote the purposes of this part [Part D of title IV of the HEA, describing the Direct Loan Program]." 20 U.S.C. 1087d(a)(6). The Direct Loan Agreement described in section 454 of the HEA is now included as a separate component of the program participation agreement required under section 487(a) of the HEA. 20 U.S.C. 1094(a). The purpose of the Direct Loan Program is to provide loans to students and parents to finance the attendance of students in postsecondary education. Loans are not grants, and are expected to be repaid. The same part of the HEA, part D, also includes the borrower defense provision, section 455(h) of the HEA, which directs the Department to "specify in regulations which acts or omissions of an institution . . . a borrower may assert as a defense to repayment" of a Direct Loan. 20 U.S.C. 1087e(h).

While section 455(h) of the HEA authorizes the Department to establish grounds for a borrower to avoid repaying a Direct Loan, we believe that the overall "purpose" of the Direct Loan Program is to make loans that will then be repaid. To be repayable, the loans must be enforceable obligations of the borrowers. Acts and omissions by schools that give a borrower grounds for avoiding repayment of a Direct Loan thereby frustrate the achievement of the primary objectives of the Federal loan program—to both finance education and obtain repayment. By impeding the ability of borrowers to obtain effective relief directly from the school, the practices we propose to prohibit in § 685.300(d) through (ii) instead encourage these borrowers to raise their claims against the school to the Department as reasons for not repaying their loans, and in so doing, increase the financial risk to the taxpayer from the claims themselves.

Class Action Waivers

In considering class action waivers, we consider the effect that such waivers can and have already had on the interests of taxpayers and the achievement of the purposes and objectives of the Direct Loan Program.

Among other things, the Department has reviewed the Notice of Proposed Rulemaking recently issued by the CFPB (hereinafter the "CFPB Arbitration Agreements NPRM") and considers the analysis and proposals made there as they bear on these assessments for the Direct Loan Program.[46] The CFPB has been charged by statute with evaluating the use of mandatory, pre-dispute arbitration agreements. 12 U.S.C. 5518(a). The CFPB conducted a comprehensive three-year study of those agreements' effect on consumers, and has made a preliminary determination that a ban on the use of mandatory pre-dispute arbitration agreements regarding covered consumer financial products and services to preclude assertion of claims through class action lawsuits would benefit consumers, serve the public interest, and be consistent with its study.[47] The CFPB stated that its study, together with the CFPB's experience and expertise, resulted in the CFPB's notice of proposed rulemaking regarding class action waivers. The CFPB stated the following "preliminary conclusions":

> (1) The evidence is inconclusive on whether individual arbitration conducted during the Study period is superior or inferior to individual litigation in terms of remediating consumer harm; (2) individual dispute resolution is insufficient as the sole mechanism available to consumers to enforce contracts and the laws applicable to consumer financial products and services; (3) class actions provide a more effective means of securing relief for large numbers of consumers affected by common legally questionable practices and for changing companies' potentially harmful behaviors; (4) arbitration agreements block many class action claims that are filed and discourage the filing of others; and (5) public enforcement does not obviate the need for a private class action mechanism.

CFPB Arbitration Agreements NPRM, 81 FR 32830, 32855.

The CFPB identified several features of class actions in the consumer financial services markets that we consider applicable to the postsecondary education market. First, the CFPB noted that class actions facilitate relief for individual consumers because they "provide a mechanism for compensating individuals where the amounts at stake for individuals may be so small that separate suits would be impracticable."[48] Second, class actions "strengthen incentives" for industry members to "engage in robust compliance and customer service on an ongoing basis."[49] While government agencies "can and do bring enforcement actions against companies that cause injury to large numbers of consumers, government resources to pursue such lawsuits are limited."[50] Thus, the CFPB preliminarily concludes, "Public enforcement is not a sufficient means to enforce consumer protection laws and consumer financial contracts."[51] As the CFPB stated, "When companies can be called to account for their misconduct, public attention on the cases can affect or influence their individual business practices and the business practices of other companies more broadly."[52] Moreover, the CFPB preliminarily finds that "exposure to consumer financial class actions creates incentives that encourage companies to change potentially illegal practices and to invest more resources in compliance in order to avoid being sued."[53] Based on its comprehensive study of the use of pre-dispute arbitration agreements in the financial services sector, the CFPB now proposes to bar the use of arbitration agreements to preclude the pursuit of class actions, which includes the use of class action waivers in arbitration agreements—agreements that require consumers in the financial services markets to agree to forego class action.[54]

The proposed CFPB rule describes the financial services markets to which the CFPB rule would apply.[55] We believe the findings and reasoning of the CFPB support the protections for Direct Loan borrowers of the kind we propose here. Agreements that bar relief by class action lawsuits for potential borrower defenses remove the risk to a school that the threat of such a class action would pose and, thus, they eliminate the financial incentive for the school to comply with the law that such a risk of a class action would otherwise create.[56] By doing so, class action waivers impede borrowers from obtaining compensatory relief for themselves, and further prevent borrowers from obtaining injunctive relief to compel a school, in a timely manner, to desist from the conduct that caused them injury and could continue to cause other borrowers injury in the future. Class action waivers effectively allow a school to perpetuate misconduct with much less risk of adverse financial consequences than if the school could be held accountable in a class action lawsuit.

Recent history demonstrates the need to address bans by postsecondary institutions on class actions for potential borrower defense claims. Corinthian Colleges included explicit class action waiver provisions in enrollment agreements, and used those, with mandatory pre-dispute arbitration clauses, to resist class actions by students.[57] Government investigations established that Corinthian had for years engaged in widespread misrepresentations and other abusive conduct. In April 2015, the Department levied a $30 million fine against Heald, a chain owned by Corinthian, for misrepresenting its placement rates, but several days later, Heald and the remaining Corinthian-owned schools closed, and Corinthian filed for bankruptcy relief. The State of California sued Corinthian in September 2013, and obtained a $1.1 billion judgment against the company only in March 2016, after the company had filed for bankruptcy relief. The CFPB sued Corinthian in September 2014, and obtained a $531 million judgment against the company only in October 2015—well after Corinthian had become insolvent and filed in bankruptcy. None of these government actions actually achieved affirmative recovery for Corinthian Direct Loan borrowers.[58] Yet in 2012, a class of students attending Corinthian Colleges, including Heald College and Everest Institute, Miami, had filed class actions against the schools for students who attended the schools since 2005 (Everest) or 2009 (Heald), for "misrepresenting the quality of its education, its accreditation, the career prospects for its graduates, and the cost of education." *Ferguson* v. *Corinthian Colleges,* 733 F.3d 928 (9th Cir. 2013). Corinthian defended by claiming that the arbitration clause in their enrollment agreements barred relief in a class action, and in an August 2013 ruling the Ninth Circuit Court of Appeals agreed. *Id.* Another class action filed in 2011 in Illinois against Corinthian Colleges by students, alleging deception about placement rates, was similarly barred. *Montgomery* v. *Corinthian Colleges,* C.A. No. 11–C–365 (N.D.Ill. Mar. 25, 2011). Other Corinthian students unsuccessfully pursued relief through individual and class actions against Corinthian schools, and, in each instance, Corinthian successfully opposed the suits and obtained rulings compelling individual arbitration of the student claims.[59] In yet another case, Corinthian opposed recovery by a student who had been compelled to arbitrate, and had obtained a favorable award from the arbitrator that granted relief not only to the individual student but to a class of students; Corinthian argued, and the court agreed, that the arbitration agreement barred even class arbitrations. *Reed* v. *Fla. Metropolitan Univ.,* 681 F.3d 630 (5th Cir. 2012), abrogated by *Oxford Health Plans LLC* v. *Sutter,* 133 S. Ct. 2064, 186 L. Ed. 2d 113 (2013).

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[46] Consumer Financial Protection Bureau, Arbitration Agreements, 80 FR 32830 (May 24, 2016).

[47] CFPB, Small Business Advisory Review Panel for Potential Rulemaking on Arbitration Agreements, Oct. 7, 2015 (SBREFA Outline) at 4.

[48] CFPB Arbitration Agreements NPRM, at 81 FR 32833; see also *SBARP*, at 15.

[49] *Id.* As the CFPB noted in its study, in the 46 consumer class actions and six individual suits filed by consumers in which defendant companies obtained orders compelling arbitration, in only 12 instances did a consumer then pursue arbitration, and none of the 12 were class arbitrations. CFPB, Arbitration Study, March 2015, § 6.7.1.

[50] *Id.* As the CFPB also noted in its study, government enforcement authorities brought some 1150 administrative or judicial enforcement actions during the 2010–2012 survey period, of which some 133 address the same conduct as that on which consumers had brought a class action lawsuit; in 71 percent of these instances, the private class action preceded the government enforcement action. CFPB Arbitration Study, March 2015, § 9.1.

[51] CFPB Arbitration Agreements NPRM, at 81 FR 32860.

[52] CFPB Considers Proposal to Ban Arbitration Clauses that Allow Companies to Avoid Accountability to Their Customers, Oct. 7, 2015, available at *www.consumerfinance.gov/newsroom*

[53] CFPB Arbitration Agreements NPRM, at 81 FR 32864.

[54] *www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-proposes-prohibiting-mandatory-arbitration-clauses-deny-groups-consumers-their-day-court/* CFPB Arbitration Agreements NPRM, 81 FR 32830, 32925, to be codified at 12 CFR 1040.4.

[55] See CFPB Arbitration Agreements NPRM, 81 FR 32830, 32925, to be codified at 12 CFR 1040.3 (describing covered services); See also: SBREFA Outline at 22.

[56] The Department makes no distinction between class action waivers included in arbitration agreements and such waivers established otherwise, such as in an enrollment agreement that does not include any reference to or agreement regarding arbitration. The negative effects of such waivers discussed here hold regardless of where the waiver is established.

[57] See, *e.g.*, *Montgomery* v. *Corinthian Colleges*, C.A. No. 11–C–365 (N.D.Ill. Mar. 25, 2011); *Ferguson* v. *Corinthian Colleges, Inc.*, 773 F.3d 928 (9th Cir. 2013).

If the student class actions had been able to proceed, the class actions could have compelled Heald College and the Corinthian Colleges, generally, to provide financial relief to the students and to change their practices while Corinthian was still a viable entity. Instead, impacted borrowers with Direct Loans from attendance at any of the Corinthian Colleges will only be able to obtain relief by raising the schools' misconduct as a defense to their Federal loans through the Department's current borrower defense process under § 685.206(c).[60] As of the close of March 2016, the Department had granted discharge relief in the amount of $42,318,574 to 2,048 Direct Loan borrowers making claims related to Heald, Everest Institute, and Wyotech.[61] As of June 1, the Department had received more than 23,000 claims relating to Corinthian and other schools.

Similarly, the inability of borrowers to bring class actions removed the deterrent force that the threat of being sued in a class action posed to other industry members during this same period. Federal and State reviews of for-profit school practices over the past five years, recounted, for example, in the Department's notice of proposed rulemaking for Program Integrity: Gainful Employment, 79 FR 16426 (March 25, 2014), show numerous instances in which major for-profit schools engaged in deceptive acts of the kind on which students were attempting to sue. However, during that same period, courts regularly rebuffed the students' attempts by compelling the students to submit their claims to arbitration. See, *e.g., Rosendahl* v. *Bridgepoint Educ., Inc.,* No. 11CV61 WQH WVG, 2012 WL 667049 (S.D. Cal. Feb. 28, 2012). Had students been able to bring class actions against Corinthian or other industry members, it is reasonable to expect that other schools would have been motivated to change their practices to avoid facing the risk of similar suits.

Class action bans eliminate this incentive. By doing so, these agreements increase the likelihood that borrowers who have such claims will present them solely to the Department as defenses to repayment of their taxpayer-funded Federal loans. The Department's borrower defense process gives limited relief for borrowers, providing only discharge of the borrower's Federal loan obligation, and potential recovery of past payments made to the Secretary, rather than compensation in damages from the school for his or her losses. Recoveries through the court system —for the cost of the loan itself—would eliminate any need to seek relief from the Department—and the taxpayers. In addition, recoveries in damages may include other losses the borrower incurred as well, such as the tuition an individual privately paid or the value of the time spent at the institution. In the Department's experience, borrower defense claims are presented to the Department well after the underlying act or omission that gave rise to the claim has occurred, at a point at which the school may well have ceased operations and there may be less reliable evidence available to borrowers. That shifts the financial risk of a school's insolvency to the taxpayer, rather than to the school as the responsible party.

We believe that class action lawsuits not only provide a vehicle for addressing a multitude of relatively small claims that would otherwise not be raised—or raised only as borrower defense claims—but create a strong financial incentive for both a defendant school and other similarly situated schools to comply with the law in their business operations. Pre-dispute arbitration agreements coupled with class action waivers eliminate this incentive by preventing the aggregation of small claims that may reflect widespread wrongdoing. We believe that banning class action waivers as they pertain to potential borrower defense claims would promote direct relief to borrowers from the party responsible for injury, encourage schools' self-corrective actions, and, by both these actions, lessen the amount of financial risk to the taxpayer in discharging loans through the defense to repayment process.

Pre-Dispute Arbitration Agreements

Because pre-dispute arbitration agreements bar the student from bringing an individual lawsuit against the school for relief, these agreements pose some of the same risks to borrowers and the taxpayer as those posed by class action waivers. Even if the borrower were not contractually foreclosed from pursuing a class action suit, Federal and State rules impose requirements on class actions that may well prevent particular borrowers from bringing and successfully maintaining a class action. For such borrowers, mandatory pre-dispute arbitration agreements bar them from seeking judicial relief.[62] The ability to compel arbitration allows the school to bar the individual from bringing a suit, either individually or, by joinder, with other borrowers, and thereby avoid the publicity and financial risks described earlier that follow from class actions. Similarly, foreclosing individual or joinder actions eliminates, for other industry members, the risk that a well-publicized lawsuit will inspire similar individual or joinder actions against those schools, and therefore dampens or eliminates the incentive for other schools to comply with the law in their business dealings with their student customers. In addition, a well-publicized lawsuit is more likely to attract the attention and risk of compensatory or prophylactic enforcement action by this Department and other government agencies. Foreclosing individual student lawsuits removes this risk, much like class action waivers. Accordingly, mandated arbitration can be expected to frustrate the Federal and Direct Loan interests for the same reasons, though to a lesser degree, than class action waivers.

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[58] This Department and the CFPB did achieve substantial relief in 2015 for many Corinthian students who had obtained private loans, but only through negotiations with the Educational Credit Management Corporation, which acquired some of the Corinthian schools.

[59] *Eakins* v. *Corinthian Colleges, Inc.,* No. E058330, 2015 WL 758286 (Cal. Ct. App. Feb. 23, 2015); *Okwale* v. *Corinthian Colleges,* No. 1:14–CV–135–RJS, 2015 WL 730015 (D. Utah Feb. 19, 2015); *Kimble* v. *Rhodes College,* No. C–10–5786, 2011 WL 2175249 (N.D. Cal. June 2, 2011); *Miller* v. *Corinthian Colleges,* 769 F.Supp.2d. 1336 (D. Utah 2011); *Rodriguez* v. *Corinthian Colleges, Inc.,* No. 07–CV–02648–EWNMJW, 2008 WL 2979505 (D. Colo. Aug. 1, 2008); *Ballard* v. *Corinthian Colleges, Inc.,* No. C06–5256 FDB, 2006 WL 2380668 (W.D. Wash. Aug. 16, 2006); *Anderson* v. *Corinthian Colleges, Inc.,* No. C06–5157 FDB, 2006 WL 2380683 (W.D. Wash. Aug. 16, 2006).

[60] Because Corinthian required pre-dispute arbitration agreements, students were unable to successfully pursue individual lawsuits against the schools.

[61] Third Report of the Special Master for Borrower Defense to the Under Secretary, March 25, 2016, available at *https://www2.ed.gov/documents/press-releases/report-special-master-borrower-defense-3.pdf.*

We note that the CFPB considered a ban on mandatory pre-dispute arbitration agreements, and in light of its mandate, preliminarily found the evidence to be "inconclusive whether individual arbitration conducted during the Study period is superior or inferior to individual litigation in remediating consumer harm . . ." 81 FR 32830, 32855, 32921. The CFPB did acknowledge that a ban on pre-dispute arbitration agreements would "give[ ] providers [of financial services the] same incentives to comply with the law as the proposed rule [banning class action waivers]. 81 FR 32830, 32921. Section 1028(b) of the Dodd-Frank Act provides that the mandate of the CFPB with respect to any regulation the CFPB adopts regarding arbitration is to determine whether, it would be in the "public interest and for the protection of consumers" to "prohibit or impose limitations on the use of an agreement . . . for a consumer financial product or service providing for arbitration of any future dispute between the parties . . ." 12 U.S.C. 5518(b). Also, under section 1028(b), "the findings in such rule shall be consistent with the study."

The Department proposes to act under a different mandate, under section 454(a)(6) of the HEA, to adopt "provisions as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of this part [the Direct Loan Program under Part D of title IV of the HEA]." 20 U.S.C. 1087d(a)(6).

As discussed above, the interests at stake in this determination are not the interests of the "public" and "consumers," but the interests of the Federal taxpayers whose funds are at risk for borrower defense claims asserted on Federal Direct Loans, and the objective at stake here, as discussed, is the successful financing of postsecondary education by providing loans repayable by current recipients for the benefit of future generations of borrowers. Because the interests at stake in regard to Direct Loans, though not inconsistent with those prescribed in the Dodd-Frank Act, are different, the Department, for the reasons stated here, considers individual litigation a better tool to protect the taxpayers' interests in the Direct Loan program than individual arbitration.

The current regulations in § 685.206(c) require Department decision makers to apply the State law applicable to the variety of causes of action that constitute borrower defenses to repayment. Under the proposed regulations, this standard would continue to apply to grievances by borrowers related to existing Direct Loans and, thus, continue to require Department officials to acquire sufficient familiarity with the law of the States to properly apply that law to thousands of borrower defense claims. The Federal interest, and the purposes of the Direct Loan program, are frustrated to the extent that schools are able to bar individuals with Direct Loan-related grievances from having those claims adjudicated by State courts, which are well-situated to adjudicate these claims under judicial procedures that assure appellate review of trial court rulings. We recognize the desirability of this option by retaining, under the proposed new standard in § 685.222, the option to obtain borrower relief based on a favorable judgment of a court of competent jurisdiction, even if the judgment rests on a State law-based cause of action. By requiring institutions to permit individual borrowers access to judicial forums for claims that may constitute borrower defenses, the proposed regulations would allow borrower claims based on State law causes of action to be resolved locally, by tribunals well versed in that law, and whose decisions are subject to appellate review, unlike the far more narrow review to which arbitral awards are subject.[63] Permitting this access would promote a balanced evolution of the borrower defense standard, assuring that borrowers with meritorious State law claims will be able to pursue those in an appropriate forum, thereby reducing both the incentive for borrowers to assert their claims only through the Department process, and the burden on the Federal administrative process to continue to evaluate those claims.

Accordingly, we propose to prohibit a Direct Loan participating school from requiring the student to agree, prior to a dispute about a potential borrower defense claim, to arbitrate such a dispute. We refer to such agreements as "mandatory pre-dispute arbitration agreements" and define those agreements as "mandatory" if the school requires the student to agree to arbitrate either as part of the enrollment agreement or in any other form the student is required to execute in order to enroll or continue in school. We recognize that some pre-dispute arbitration agreements allow the consumer within a set period to affirmatively opt-out of an agreement to arbitrate. We include in the proposed definition that such agreements are binding unless the student affirmatively opts out of the agreement, and we invite comment on whether opt-out agreements should be considered "mandatory" agreements.

Transparency of the Arbitral Process and Outcomes

The Department currently has little opportunity to monitor, and more importantly timely respond to, grievances that borrowers present in arbitration and even private suits, and the defenses and arguments raised by title IV participants in opposing relief. We propose, therefore, to require schools to provide us, in a timely manner, with copies of initial and certain subsequent filings in judicial or arbitral tribunals, and decisions and awards rendered in those proceedings.

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[62] Fed. R. Civ. Proc. 23 requires, for example, that questions of law or fact common to members of the class predominate over issues affecting only individual members. Fed. R. Civ. P. 23(b)(3). Courts have not infrequently denied class certification for student loan borrowers raising class action fraud claims against schools:

> When students who seek to be named as plaintiffs in a proposed class action may have considered a variety of factors in deciding to enroll in a school alleged to have defrauded them, absent are typical and predominant questions whether such plaintiffs relied upon misrepresentations made by the school in deciding to enroll therein; class certification must therefore be denied. *Rodriguez* v. *McKinney*, 156 FRD. 112, 116 (E.D.Pa. 1994) (no predominance); *Graham* v. *Sec. Sav. & Loan*, 125 FRD. 687, 691 n. 4 (N.D.Ind. 1989) (no typicality), *aff'd sub nom. Veal* v. *First Am. Sav. Bank*, 914 F.2d 909 (7th Cir. 1990); *see Torres* v. *CareerCom Corp.*, 1992 WL 245923, at *5 (E.D.Pa. Sept. 18, 1992) (no predominance); *see generally Seiler Jr.* v. *E.F. Hutton & Co.*, 102 FRD. 880, 890 (D.N.J. 1984) (no typicality).

Morgan v. *Markerdowne Corp.*, 201 FRD. 341, 348 (D.N.J. 2001).

[63] See 9 U.S.C. 10.

The CFPB also proposes to require companies that use pre-dispute arbitration agreements to submit to the CFPB copies of initial arbitration claim filings made or received by the companies, arbitration awards, and certain other records.[64] The CFPB states that it is considering whether to make these available to the public by posting them to its Web site. The CFPB notes that this would permit the CFPB and the public to monitor arbitrations on an ongoing basis and identify trends that might "indicate problematic business practices that harm consumers, particularly since many claims settle before an award is rendered." [65]

We propose the same kind of requirement here, for similar reasons. Lack of timely notice and confidentiality provisions make it difficult for the Department to discern patterns and practices that may generate borrower defense claims, involve misuse of title IV, HEA funds, or constitute misrepresentations of the kind that the HEA authorizes the Department to remedy by fines and other actions. Without knowledge of the kinds of claims and relief granted, we cannot evaluate whether further measures are needed, or whether the school is resisting class action complaints on claims that would constitute borrower defenses under the proposed regulations.

The proposed submission requirement for institutions that use arbitration agreements would enable the Department to analyze the claims that may also be potential borrower defense claims, the schools' responses, and the outcomes of the claims in arbitration. We would be able then, as needed, to publicize both the kinds of potential borrower defense claims asserted and the decisions on those claims, and to decide whether either an immediate response or intervention was needed, or whether systemic correction action was warranted.[66] We would also be better able to evaluate the merits of a claim that a borrower later raises as a borrower defense to repayment. We believe that proposed § 685.300(g), which would require schools to submit copies of filings for arbitration, responses, awards, and certain other documents within 60 days of the filing or receipt by the school, as applicable, is needed to enable the Secretary to monitor and evaluate these claims and thereby protect the interests of the United States and promote the purposes of the Direct Loan Program.[67] In contrast, the Secretary has a far greater and more immediate interest in claims and defenses asserted in litigation, because court rulings on those assertions may construe the HEA and Department regulations, and thus have far greater effect than arbitration decisions. The issues will be joined as early as 20 days after the service of the complaint, when the defendant must answer or move to dismiss the complaint. To participate in a timely manner in litigation in which the parties assert their interpretations of the HEA and regulations, the Department needs prompt notice of these filings, in order to identify those that raise these kinds of assertions, and we propose in § 685.300(h) that the school submit copies of each complaint, any counterclaim, any dispositive motion filed by either party, any ruling on a dispositive motion, and any judgment, within 30 days of receipt or filing by the school. We believe the proposed submission requirements are appropriate for the reasons stated above. However, we seek comment on whether the Department should adopt different submission, transparency, or procedural fairness requirements, and if so, what the supporting rationale for those requirements would be, and why those other requirements would meet the objectives outlined in this section.

To the extent that a school may now include in its arbitration agreements a confidentiality provision, the rule would require the school to remove that provision or modify its use to the extent needed to make these disclosures.

Federal Arbitration Act

A negotiator asserted that the Department does not have the authority to proscribe waivers of class action litigation or use of mandatory pre-dispute arbitration agreements, citing recent Supreme Court rulings upholding contractual agreements to arbitrate that held that the Federal Arbitration Act (FAA) protects enforceable arbitration agreements and expresses a "liberal Federal policy favoring arbitration." [68] The FAA protects the validity and enforceability of arbitration agreements. Section 2 of the FAA states: "[a] written provision in any . . . contract . . . to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. 2. This act was intended to reverse judicial hostility to arbitration and to put arbitration agreements on an equal footing with other contracts.[69] The negotiator contended that the FAA as applied in case law barred the Department from adopting a rule that would ban either such class action waivers or mandatory pre-dispute arbitration agreements.

The Department does not have the authority, and does not propose, to displace or diminish the effect of the FAA. However, the Department has clear authority to regulate the conduct of institutions that wish to participate in the Direct Loan Program. As noted earlier, section 452(b) of the HEA states, "No institution of higher education shall have a right to participate in the [Direct Loan] programs authorized under this part [part D of title IV of the HEA]." 20 U.S.C. 1087b(b). If a school chooses to participate in the Direct Loan Program, it must enter into a Direct Loan Program participation agreement. 20 U.S.C. 1087d. Section 454(a)(6) of the HEA authorizes the Department to include in that participation agreement "provisions that the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of" the Direct Loan Program. 20 U.S.C. 1087d(a)(6). We propose to adopt regulations that limit the use of arbitration agreements under this authority. We discuss earlier the reasons we consider the proposed limits on arbitration to be necessary to protect the interests of the United States and promote the purposes of the Direct Loan Program. Under proposed § 685.300(f), an institution would remain free to require students to enter into mandatory pre-dispute arbitration agreements, so long as those agreements exclude any requirement to arbitrate a potential borrower defense. An institution that does not choose to accept these provisions is free to include arbitration requirements in its enrollment agreements, and to exercise its contractual rights under such agreements to compel arbitration. However, under the proposed regulations, the institution would not be permitted to obtain or exercise such agreements and continue to participate in the Direct Loan Program unless those agreements exclude any requirement that the student arbitrate a potential borrower defense claim.

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[64] CFPB Arbitration Agreements NPRM, 81 FR 32830, 32926 (May 24, 2016), to be codified at 12 CFR 1040.4(b)(1).

[65] SBREFA Outline, at 20.

[66] Schools and other institutions participating in the title IV, HEA programs have defended suits by borrowers by contending that borrowers cannot rely on State law to redress conduct by a defendant that also violates an HEA requirement, because, they argue, enforcement of HEA requirements is vested solely in the Secretary, not in private parties. See, *e.g., Sanchez* v. *ASA College Inc.*, in which the defendant school raised this argument:

> Defendants also assert that dismissal is warranted because the HEA grants the Secretary "exclusive authority" to remedy any Title IV violations and, thus, that the HEA precludes Plaintiffs' claims based on failures to comply with its provisions. (Defs. Mem. 10–15).
>
> *Sanchez* v. *ASA Coll., Inc.*, No. 14–CV–5006 JMF, 2015 WL 3540836, at *4 (S.D.N.Y. June 5, 2015).

The Department, with timely notice in that instance, was able to file a statement of interest to rebut this serious misconception that a party injured by conduct that violates an HEA requirement of law cannot sue for relief for that injury in reliance on a State law that would allow a party to sue for relief for that conduct. A suit for relief based on State law in such a situation is not an attempt to find a private right of action for relief under the HEA.

[67] The 60-day submission requirement is the same period as proposed by the CFPB for submission of arbitral filings. CFPB Arbitration Agreements NPRM, 81 FR 32830, 32926, to be codified at 12 CFR 1040.4(b)(2).

[68] *AT&T Mobility* v. *Concepcion*, 563 U.S. 333 (2011).

[69] *Id.* at 342.

Implementation for Agreements Regarding Arbitration

Institutions that intend to mandate pre-dispute arbitration agreements or obtain class action waivers from students after the effective date of the proposed regulations will be required to include provisions in those agreements that exclude from any class action waiver or commitment to arbitrate those claims that relate to the making of the Direct Loan or the provision of educational services by the institution. The proposed regulations include provisions explaining the institution's commitment not to attempt to compel arbitration or resist class actions, as applicable, for claims that are potential borrower defense claims.

We recognize that many agreements regarding arbitration or class action waivers have already been executed and more may be executed prior to the date on which the proposed regulations may be issued in final and take effect. The proposed regulations therefore require that an institution that has such agreements not only to comply with the regulations that would bar the institution from attempting to exercise mandatory pre-dispute arbitration agreements or class action waivers regarding borrower defense-type claims, but also to either amend the agreements, or at least notify, the students who executed those agreements that the institution would not attempt to exercise those agreements in a manner proscribed by the regulations.

The institution would be required to notify students who had already executed a non-compliant arbitration or class action waiver agreement no later than the date on which the institution provides exit counseling, which provides a useful context in which to explain the change. For those who have executed a non-compliant arbitration or class action waiver but whom the institution has already provided exit counseling that included or accompanied the notice or amendment, the proposed rule would require the institution to provide the notice or amendment within 60 days of the date on which the institution receives a complaint in a lawsuit by a former student that raised borrower defense claims, or a demand for arbitration of a borrower defense claim. As proposed here, the institution would be barred from opposing such a lawsuit on the ground that the borrower had already agreed to waive class action relief or individual lawsuit for relief for such a claim. We request comment on whether the institution should provide notice to currently-enrolled students or to former students, and if so, when and to whom those notices should be required.

Severability

While the Department is confident that the provisions addressing arbitration in § 685.300(d), (e), (f), (g), (h) and (i) would not violate the FAA, it has carefully considered the negotiator's view, and the possibility that a court might rule that any of these provisions is invalid based on the FAA or any other reason. The Department considers the separate provisions barring waivers of class actions, barring mandatory pre-dispute arbitration agreements, and requiring the institution to provide to the Department copies of initial filings and subsequent filings, awards, and decisions in borrower defense suits or arbitrations, to be valuable independently and to operate independently and to serve separate but complementary objectives. Accordingly, in an abundance of caution, we propose in § 685.309 to specify the Department's intent that if any provision of subpart C of part 685 is held invalid, the remaining parts shall not be affected.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Introduction

Under Executive Order 12866, it must be determined whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action would have an annual effect on the economy of more than $100 million because the proposed regulations would have annual federal budget impacts of approximately $199 million in the low impact scenario to $4.2323 billion in the high impact scenario at 3 percent discounting and $198 million and $4.17 billion at 7 percent discounting, additional transfers from affected institutions to student borrowers via reimbursements to the Federal government, and annual quantified costs of $14.9 million related to paperwork burden. Therefore, this proposed action is "economically significant" and subject to review by OMB under section 3(f) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action and have determined that the benefits would justify the costs.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered. Under "Initial Regulatory Flexibility Act Analysis," we consider the effect of the proposed regulations on small entities.

Need for Regulatory Action

The proposed regulations address several topics related to the administration of title IV, HEA student aid programs and benefits and options for borrowers. As stated in the preamble, the Department first implemented borrower defense regulations for the Direct Loan Program in the 1995–1996 academic year to protect borrowers. The Department's original intent was for this rule to be in place for the 1995–1996 academic year, and then to develop a more extensive rule for both the Direct and FFEL loan programs through negotiated rulemaking in the following year.

However, based on the recommendation of non-Federal negotiators in the spring of 1995, the Secretary decided not to develop further regulations for the Direct Loan and FFEL programs. As a result, the regulations have not been updated in two decades to establish appropriate processes or provide other necessary information to allow borrowers to effectively utilize borrower defenses.

For instance, the current regulations require an analysis of State law in order to determine the validity of a borrower defense claim. This approach creates complexities in determining which State law applies and potential inequities, as students in one State may receive different relief than students in another State, despite having common facts and claims.

For example, the landscape of higher education has changed significantly over the past 20 years. In particular, the role of distance education in the higher education sector has grown substantially. In the 1999–2000 academic year, about eight percent of students were enrolled in at least one distance education course; by the 2007–2008 academic year, that number had grown to 20 percent.[70] Recent IPEDS data indicate that in the fall of 2013, 26.4 percent of students at degree-granting, title IV participating institutions were enrolled in at least one distance education class.[71] Much of this growth occurred within, and coincided with, the growth of the proprietary higher education sector. In the fall of 1995, degree-granting, for-profit institutions enrolled approximately 240,000 students. In the fall of 2014, degree-granting, for-profit schools enrolled over 1.5 million students.[72] These changes to the higher education industry have allowed students to enroll in colleges based in other States and jurisdictions with relative ease.

These changes have also had an impact on the Department's ability to apply its borrower defense regulations. The current borrower defense regulations do not identify which State's law is considered the "applicable" State law on which the borrower's claim can be based.[73] Generally, the regulation was assumed to refer to the laws of the State in which the institution was located; we did not have much occasion to address differences in protection for borrowers in States that offer little protection from school misconduct or borrowers who reside in one State but are enrolled via distance education in a program based in another State. Some States have extended their rules to protect these students, while others have not.

As noted in the preamble, Corinthian, a publicly traded for-profit higher education company that enrolled over 70,000 students at more than 100 campuses nationwide, filed for bankruptcy in 2015 after being the subject of multiple investigations and actions by Federal and State governments. While the Department is committed to ensuring that students harmed by Corinthian's misrepresentations receive the relief to which they are entitled under the current borrower defense and closed school discharge regulations, the Department also recognized that the existing rules made this process burdensome, both for borrowers and for the Department. As the Department began to determine the best process for dealing with the fall-out of the Corinthian bankruptcy, it became apparent that under the current process, significant Department resources would be required to review individual State laws to determine the law that would be applicable to claims that might be received from many of these individual borrowers. In order to create and oversee a process to provide debt relief for these Corinthian students who applied for Federal student loan discharges based on claims against Corinthian, the Department appointed a Special Master in June of 2015.

As a result of this experience, the Department is proposing new regulations that would develop a Federal standard for borrower defense to help ensure that all Direct Loan borrowers have a process to obtain adequate loan relief for injury caused by the acts or omissions of the institutions they attended. The proposed regulations would also provide clarity to the process by which a borrower defense is asserted and resolved. To protect taxpayers and the Federal government, the Department also seeks to hold institutions responsible for their acts and omissions that give rise to borrower defenses. The proposed regulations would also limit required arbitration or internal institutional dispute resolution processes for borrower defense claims.

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[70] Learning at a Distance: Undergraduate Enrollment in Distance Education Courses and Degree Programs (*http://nces.ed.gov/pubs2012/2012154.pdf*).

[71] 2014 Digest of Education Statistics: Table 311.15: Number and percentage of students enrolled in degree-granting postsecondary institutions, by distance education participation, location of student, level of enrollment, and control and level of institution: fall 2012 and fall 2013.

[72] 2015 Digest of Education Statistics: Table 303.10: Total fall enrollment in degree-granting postsecondary institutions, by attendance status, sex of student, and control of institution: Selected years, 1947 through 2025 (*http://nces.ed.gov/programs/digest/d14/tables/dt14_303.10.asp?current=yes*).

[73] In the few instances prior to 2015 in which claims have been recognized under current regulations, borrowers and the school were typically located in the same State.

Additionally, to enhance and clarify other existing protections for students, the proposed regulations would update the basis for obtaining a false certification discharge, clarify the processes for false certification and closed school discharges, require institutions to provide applications and explain the benefits and consequences of a closed school discharge, and establish a process for a closed school discharge without an application for students who do not re-enroll in a title IV-participating institution within three years of an institution's closure. The proposed regulations would also codify the Department's practice that a discharge based on school closure, false certification, unpaid refund, or defense to repayment will result in the elimination or recalculation of the subsidized usage period associated with the loan discharged.

The Department also proposes to amend the regulations governing the consolidation of Nursing Student Loans and Nurse Faculty Loans so that they align with the statutory requirements of section 428C(a)(4)(E) of the HEA; clarify rules regulating the capitalization of interest on defaulted FFEL Loans; require that proprietary schools with zero or negative loan repayment rates warn prospective and enrolled students of those repayment rate outcomes; require that a school disclose on its Web site and to prospective and enrolled students if it is required to provide financial protection to the Department; clarify the treatment of spousal income in the PAYE and REPAYE plans; and make other changes that we do not expect to have a significant economic impact.

We believe that our proposals in this NPRM represent our best efforts to engage all sectors of the postsecondary industry and develop regulations that are both effective and practical.

Summary of Proposed Regulations

The table below briefly summarizes the major provisions of the proposed regulations.

TABLE 2—SUMMARY OF PROPOSED REGULATIONS

Provision	Reg section	Description of provision
Borrower defense to repayment		
Applicability	§ 685.206	Clarifies that existing regulations apply to loans first disbursed before July 1, 2017.
State Law	§ 685.206	Clarifies that a borrower defense claim may be asserted if an institution violates applicable State law as it relates to the making of the loan or the provision of educational services.
Federal Standard and Process	§ 685.222	Adds a new section addressing borrower defenses for loans first disbursed on or after July 1, 2017, and defines circumstances under which a borrower defense may be established. Establishes a process for asserting and determining a borrower defense claim for loans first disbursed before and after July 1, 2017.
Misrepresentation	§ 668.71 § 685.222(d)(2)	Amends the definition of "misrepresentation" for what the Secretary may consider in determining whether schools engaged in misrepresentation for § 668.71, adopts the definition for § 685.222, and in § 685.222 requires that a borrower must have reasonably relied on the misrepresentation.
Remedial Action and Recovery from the Institution.	§ 685.206	Removes provision that the Secretary will not initiate action to recover after the end of the three-year record retention period.
	§ 685.222(e)	Establishes that the Secretary may initiate an action to recover for the amount of relief resulting from an individually filed and determined borrower defense application.
	§ 685.222(h)(5)	Indicates that the Secretary will recover the amount of relief resulting from a group process for borrower defenses with respect to loans made to attend an open school.
	§ 685.308	Revises to describe grounds on which an institution causes a loss for which the Secretary holds schools accountable, along with the procedures to establish and enforce that liability.
Administrative Forbearance	§ 685.205(b)(6)	Adds a mandatory administrative forbearance during the period when the Secretary is determining the borrower's eligibility for a borrower defense discharge.
	§ 682.211	Mirrors the Direct Loan mandatory administrative forbearance for FFEL program loans.

TABLE 2—SUMMARY OF PROPOSED REGULATIONS—Continued

Provision	Reg section	Description of provision
Limits on Dispute Resolution Procedures.	§ 685.300(b)(11), (d)–(i)	Adds to Direct Loan program participation agreement provisions relating to schools' use of certain dispute resolution procedures. Under these proposed provisions, schools may not: (1) Require students to pursue borrower defense complaints through an internal institutional process before the student presents the complaint to an accrediting agency or government agency; (2) require arbitration of a potential borrower defense claim asserted through a class action lawsuit until a court has denied class certification or dismissed the class claim, and, if that ruling may be subject to appellate review on an interlocutory basis, the time to seek such review has elapsed or the review has been resolved, or (3) compel a student to enter into a pre-dispute agreement to arbitrate a borrower defense claim, or to rely in any way on a pre-dispute arbitration agreement with respect to any aspect of a borrower defense claim. Requires institutions to include the notices and provisions in § 685.300(e)(3) in any agreements entered into after effective date of this regulation with a student recipient of a Direct Loan for attendance at the school, or, with respect to a Parent PLUS Loan, a student for whom the PLUS loan was obtained, including any agreement regarding arbitration. Requires institutions to notify the Secretary of the initial filing of the claim, whether in court or in arbitration, and provide copies of the complaint and any counterclaim, any pre-dispute arbitration agreement filed with the arbitrator or arbitration administrator, any dispositive motion filed by a party to the suit, and the ruling on any dispositive motion and the judgment issued by the court. For agreements executed before the effective date of the proposed regulation, requires institutions to comply with the regulations and either amend the agreements or notify students that the institution would not attempt to exercise those agreements in a manner proscribed by the proposed regulations. Notification would occur no later than exit counseling, or in the case of previously enrolled students who did not receive the updated exit counseling and who sue or file for arbitration, the date on which the institution files its initial response or answer to a complaint in a lawsuit or demand for arbitration made by a student who was not already provided with notice or amendment.
	Closed School Discharge	
Provide Application	§ 668.14(b)(32)	Requires a school to provide to all enrolled students, after the Department initiates any action to terminate the school's participation, a closed school discharge application and a written disclosure of the benefits and consequences of a closed school discharge as an alternative to a teach-out.
Departmental Review of Guaranty Agency Denials.	§ 682.402(d)(6)(ii)(F)	Requires guaranty agency that denies a closed school discharge request to inform borrower of opportunity for review by the Secretary.
Discharge without Application	§ 674.33(g)(3)(iii); § 682.402(d)(8)(iii); § 685.214(c)(2)	Authorizes the Department or a guaranty agency acting with the Department's permission to grant a closed school discharge without borrower application based on evidence in the Department's or guaranty agency's possession that the borrower did not subsequently re-enroll in a title IV institution within three years after the school closed.
	False Certification Discharge	
Basis for Discharge	§ 685.215	Eliminates references to "ability-to-benefit" and establishes as grounds for a false certification discharge the certification of eligibility of a student who is not a high school graduate or the improper certification of a borrower's satisfactory academic progress. Borrower can also qualify for false certification discharge if the borrower failed to meet applicable State requirements for employment due to physical or mental condition, age, criminal record, or other reason accepted by the Secretary that would prevent the borrower from obtaining employment in the field for which the training program supported by the loan was intended.
Process	§ 685.215(d)	Updates procedures and describes evidence the Department uses to determine eligibility for a false certification discharge. Also requires the Department to: Explain to the borrower the reasons for a denial and the evidence the determination was based on; provide the borrower with an opportunity to submit additional evidence; and notify the borrower if the determination changes based on the additional evidence submitted.

TABLE 2—SUMMARY OF PROPOSED REGULATIONS—Continued

Provision	Reg section	Description of provision
Other Provisions		
Disclosures and Warnings	§ 668.41(h) and (i)	Requires warning to enrolled and prospective students by a proprietary institution that does not qualify for a low borrowing exemption if its loan repayment rate is equal to or below zero percent. Requires disclosure by an institution from any sector that is required to provide financial protection to the Secretary such as an irrevocable letter of credit or cash under § 668.175(d) or (f), or to establish a set-aside under § 668.175(h). Specifies manner in which such disclosures must be made.
Interest Capitalization	§ 682.202(b)(1); § 682.410(b)(4); § 682.405	Clarifies that interest capitalization when a guaranty agency sells a rehabilitated loan is not permitted. Also clarifies that when a guaranty agency holds a defaulted FFEL Loan and the guaranty agency has suspended collection activity to give the borrower time to submit a closed school or false certification discharge application, capitalization is not permitted if collection on the loan resumes because the borrower does not return the appropriate form within the allotted timeframe.
150 Percent Direct Subsidized Loan Limit.	§ 682.202	Codifies Department's current practice that a discharge based on school closure, false certification, unpaid refund, or defense to repayment will lead to the elimination (for full discharge) or recalculation (for partial discharge) of the subsidized usage period that is associated with the loan or loan discharged. If the discharge results in a remaining eligibility period greater than zero, the borrower is no longer responsible for interest that accrues on a Direct Subsidized Loan or portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan, unless the borrower again exceeds the 150 percent limit with additional borrowing.
Electronic Death Certificate	§ 674.61(a); § 682.402(b)(2); § 685.212(a); § 686.42(a)	Allows death discharges to be based on an accurate and complete original or certified copy of the death certificate that is scanned and submitted electronically or through verification of the death through an authoritative Federal or State electronic database approved by the Secretary.
Debt Compromise Authority	34 CFR 30.70	Reflects increased debt compromise authority to $100,000. Clarifies that generally applicable limit does not apply to claims arising under FFEL, Direct Loans, or Perkins Loan programs and requires that the Department seek DOJ review for resolution of such claims over $1,000,000.
PAYE and REPAYE Clarifications	§ 685.209(a) and (c)	For REPAYE, removes language regarding, and cross-references to, partial financial hardship. For REPAYE, makes it clear that no adjustment is made to a borrower's monthly payment for a spouse's eligible loan debt if the spouse's income is excluded from the calculation of the borrower's monthly payment. For PAYE and REPAYE, makes it clear that the inclusion of FFEL Loans in the definition of "eligible loans" is to take them into consideration for certain terms and conditions of the PAYE and REPAYE plans, but does not allow FFEL program loans to be repaid under these plans.
Nurse Faculty Loan, Federal Perkins, or Health Professions Student Loan Consolidation.	§ 685.220	Provides that nurse faculty loans made under part E of title VIII of the Public Health Service Act may be consolidated into a Direct Consolidation Loan. Reflects updates to statutory language. Revises § 685.220(d)(1)(i) to allow a borrower to obtain a Direct Consolidation Loan if the borrower consolidates at least one eligible loan under § 685.222(b). This reflects the Department's long-standing policy that generally Direct Program Loans should be given the same treatment for parallel aspects of FFEL Loans, unless otherwise provided for in the HEA or the Department's regulations.

Discussion of Costs and Benefits

The primary potential benefits of the proposed regulations are: (1) An updated and clarified process and a Federal standard to improve the borrower defense process and usage of the borrower defense process and to increase protections for students; (2) increased financial protections for taxpayers and the Federal government; (3) additional information to help students, prospective students, and their families make educated decisions based on information about an institution's financial soundness and its borrowers' loan repayment outcomes; (4) improved conduct of schools by holding individual institutions accountable and thereby deterring misconduct by other schools; (5) improved awareness and usage, where appropriate, of closed school and false certification discharges; and (6) technical changes to improve the administration of the title IV, HEA programs.

We have considered and determined the primary costs and benefits of the proposed regulations for the following groups or entities that we expect to be impacted by the proposed regulations:

- Students and borrowers
- Institutions
- Guaranty agencies and loan servicers
- Federal, State, and local government

Borrower Defense, Closed School Discharges, and False Certification Discharges

Students and Borrowers

Borrowers would be the primary beneficiary of the proposed regulations. The proposed regulations would allow borrowers to navigate the borrower defense process more efficiently and effectively. A simplified process may encourage borrowers who may have been unaware of the process, or intimidated by the complexity of the process in the past, to file a claim.

Furthermore, these proposed changes could reduce the number of borrowers who are struggling to meet their student loan obligations. During the public comment periods of the negotiated rulemaking sessions, many public commenters who were borrowers mentioned that they felt that they had been defrauded by their institutions of higher education and were unable to pay their student loans or obtain debt relief under the current regulations. Future borrowers are less likely to face these misrepresentations, since the financial consequences to schools would be dire.

Providing an automatic forbearance with an option for the borrower to decline the temporary relief and continue making payments would reduce the potential burden on borrowers pursuing borrower defenses. These borrowers would be able to focus on supplying the information needed to process their borrower defense claims without the pressure of continuing to make payments on loans for which they are currently seeking relief. When claims are successful, there will be a transfer between the Federal government and affected student borrowers as balances are forgiven and some past payments are returned. In the scenarios described in the *Net Budget Impacts* section of this analysis, those transfers range from $182 million to $5.8 billion annually.

Borrowers who ultimately have their loans discharged will be relieved of debts they may not have been able to repay, and that debt relief can ultimately allow them to become bigger participants in the economy, possibly buying a home, saving for retirement, or paying for daycare. They also will be able to return into the higher education marketplace and pursue credentials they need for career advancement. To the extent borrowers have subsidized loans, the elimination or recalculation of the borrowers' subsidized usage period could relieve them of their responsibility for accrued interest and make them eligible for additional subsidized loans, which could make returning to higher education a more acceptable option.

The proposed regulations would also give borrowers more information with which they can make informed decisions about the institutions they choose to attend. An institution would be required to disclose the reasons that it was required to obtain a letter of credit. Recent events involving closure of several large proprietary institutions have shown the need for lawmakers, regulatory bodies, State authorizers, taxpayers, and students to be more broadly aware of circumstances that could affect the continued existence of an institution. The disclosure of institutions' status as being required to provide financial protection would allow borrowers to receive early warning signs that an institution's financial or accreditation status may be at risk, and therefore borrowers may be able to withdraw or transfer to an institution in better standing in lieu of continuing to work towards earning credentials that may have limited value.

Proprietary institutions would also be required to provide a warning to prospective and enrolled students if their repayment rate is equal to or below zero percent. To estimate the effect of the repayment rate warning on institutions, the Department analyzed College Scorecard data and found that 493 of 1,174 proprietary institutions with repayment rates in the data had rates less than or equal to 50 percent, roughly equivalent to a repayment rate of zero percent or below, which would trigger the warning requirement under the proposed regulations. This analysis does not take into account the low borrowing exemption, and does not include graduate students.

Institutions

Institutions would bear many of the costs of the proposed regulations, which fall into three categories: Paperwork costs associated with compliance with the regulations; other compliance costs that may be incurred as institutions adapt their business practices and training to ensure compliance with the regulations; and costs associated with obtaining letters of credit or suitable equivalents if required by the institution's performance under a variety of triggers. Additionally, there may be a potentially significant amount of funds transferred between institutions and the Federal government as reimbursement for successful claims. Some institutions may close some or all of their programs if their activities generate large numbers of borrower defense claims.

A key consideration in evaluating the effect on institutions is the distribution of the impact. While all institutions participating in title IV loan programs are subject to the possibility of borrower defense, closed school, and false certification claims and the reporting requirements in the proposed regulations, the Department expects that fewer institutions will engage in conduct that generates borrower defense claims. Eventually, the proposed regulations can be expected to reduce the number of schools that would face the most significant costs to come into compliance, transfers to reimburse the government for successful claims, costs to obtain required letters of credit, and disclosure of borrower defense claims against the schools. In the scenarios described in the *Net Budget Impacts* section of this analysis, the annual transfers from institutions to students, via the Federal government, as reimbursement for successful claims ranges from $55 million to $3.8 billion. On the other hand, it is possible that high-quality, compliant institutions, especially in the for-profit sector, will see benefits if the overall reputation of the sector improves as a result of (1) more trust that enforcement against bad actors will be effective, and (2) the removal of bad schools from the higher education marketplace, freeing up market share for the remaining schools.

The accountability framework in the proposed regulations requiring institutions to provide financial protection in response to various triggers would generate costs for institutions. Some of the triggering provisions would affect institutions differently depending upon their type and control, as, for example, only publicly traded institutions are subject to delisting or SEC suspension of trading, only proprietary institutions are subject to the 90/10 rule, and public institutions are not subject to the financial protection requirements. To the extent data were available, the Department evaluated the financial protection triggers to analyze the expected impact on institutions. Several of the triggers are based on existing performance measures and are aimed at identifying institutions that may face sanctions and experience difficulty meeting their financial obligations. The triggers and their potential consequences are discussed in Table 3.

TABLE 3—AUTOMATIC TRIGGERS

Trigger	Description	Impact
Automatic Triggers (institution found to be not financially responsible under §668.171 and must qualify under an alternative standard)		
State or Federal agency actions.	If currently or in three most recently completed award years an institution has to repay a debt or liability arising from an investigation by a State, Federal, or other oversight entity, or settles or resolves a suit brought by one of those entities related to the making of a Federal loan or the provision of educational services, or has been sued by a government agency for such claims, unless that suit has since been dismissed. Material if amount exceeds the audit threshold in 2 CFR part 200, currently $750,000, or 10 percent of current assets. For judgments entered against the institution in most recent fiscal year in suit by government agency, if amount exceeds thresholds above. For suits by State, Federal, or other oversight entities unrelated to Federal loans or provision of educational services, if the potential damages exceed 10 percent of current assets. For pending qui tam suits or suits by private parties related to borrower defense-type claims if the suit has survived a motion for summary judgment and the suit seeks recovery of 10 percent of current assets or more.	Since 2010, at least 25 institutions have been investigated or reached settlements with State AGs, with some being involved in actions by multiple States. Federal agencies, including the Department, DOJ, FTC, CFPB, and the SEC have been involved in actions against at least 20 institutions, with multiple actions against some schools. Amount of financial protection calculated as 10 percent or more, as determined by the Secretary, of the amount of Direct Loans received by the institution in the most recently completed fiscal year.
Repayments to the Secretary.	Currently or at any time in the three most recently completed award years, the institution was required to repay the Secretary for any losses from borrower defense claims that exceeded the lesser of the audit threshold amount in 2 CFR part 200 (currently $750,000) or 10 percent of current assets.	Amount of required financial protection calculated as the greatest annual loss incurred in the last three completed award years plus the portion of outstanding claims represented by the ratio of successful borrower claims to total claims over the three most recently completed award years.
Accrediting Agency Actions.	If currently or at any time in the three most recently completed award years, the institution's primary accrediting agency required the institution to submit a teach-out plan for itself or any additional branches or locations or placed the institution on probation, issued a show-cause order, or placed the institution in a similar accreditation status for failing to meet one or more of the agency's standards, and the accrediting agency does not notify the Secretary within six months that the institution has come into compliance.	In the past three fiscal years, 52 non-public institutions have lost eligibility based on accreditation issues and 54 were put on heightened cash monitoring level two.
Loan Agreements and Obligations.	If an institution discloses in a note in its most recently audited financial statement that it violated a provision or requirement in a loan agreement with its largest secured creditor or failed to make a payment for more than 120 days to its largest secured creditor. Also, the occurrence of a monetary or nonmonetary default or delinquency event, as defined under the terms of a security or loan agreement between the institution and the creditor with the largest secured extension of credit to the institution, or the occurrence of any other event as provided under such an agreement that triggers or provides a recourse by the creditor for an increase in collateral, changes in contractual obligations, an increase in interest rates or payments, or imposes some sanction, penalty, or fee upon the institution.	
Non-Title IV Revenue.	If the institution fails the 90/10 revenue test in the most recently completed fiscal year. Applies to proprietary institutions only.	In the most recent 90/10 report, 14 institutions received 90 percent or more of their revenues from title IV funds. The total title IV funding for those institutions in award year (AY) 2013–14 was $57 million.
Publicly Traded Institutions.	If the institution's stock is involuntarily delisted from the exchange on which it is traded, the SEC warns the institution it will suspend trading on the institution's stock, or the institution fails to file a required annual or quarterly report with the SEC on time, or the institution disclosed or was required to disclose in a report filed with the SEC a judicial or administrative proceeding not covered under the triggers listed above.	

TABLE 3—AUTOMATIC TRIGGERS—Continued

Trigger	Description	Impact
Gainful Employment	For institutions where over 50 percent of students who receive title IV aid are enrolled in GE programs, if more than 50 percent of those enrolled in GE programs are in programs that failed or are in the zone under the D/E rates measure.	The Department found that of 3,958 institutions that reported GE programs for 2013–14, 1,059 institutions had a D/E rate in our 2011 GE Informational Rates and over 50 percent of their enrollment in GE programs. Of these, 107 non-public institutions had more than 50 percent of their GE enrollment in zone or failing programs. Title IV aid received by these institutions in AY2014–15 totaled $1.02 billion. The Department will continue to monitor this trigger as more recent D/E rates become available.
Withdrawal of Owner's Equity.	For institutions with a composite score under 1.5, any withdrawal of owner's equity from the institution by any means, including by declaring a dividend.	
Cohort Default Rates.	Institution's two most recent cohort default rates are 30 percent or greater. Does not apply if institution files a challenge, request for adjustment, or appeal with respect to its CDR, and that action results in reducing the CDR below 30 percent or the institution not losing eligibility or not being placed on provisional certification.	From the most recently released official CDR rates, for AY2012–13 and AY2011–12, 37 of 3,081 non-public institutions that had CDR rates in both years were over 30 percent in both years. Title IV aid received by these institutions in AY2014–15 totaled $27.8 million.
Discretionary Triggers		
Significant Fluctuation in Direct Loan or Pell Grant Volumes.	There are significant fluctuations in Direct Loan or Pell Grant funds, or a combination of those funds, received by the institution in consecutive award years that cannot be explained by changes in the institutions' programs. No specific threshold is established.	The Department looked at fluctuations in Direct Loan amounts and found that 991 of 3,590 non-public institutions had an absolute change in Direct Loan volume of 25 percent or more between the 2013–14 and 2014–15 award years.
High Annual Dropout Rates.	High dropout rates as calculated by the Secretary. No specific threshold is established.	The Department analyzed College Scorecard data to develop a withdrawal rate within six years. Of 928 proprietary institutions with data, 482 had rates from 0 to 20 percent, 415 from 20 to 40 percent, 30 from 40 to 60 percent, and 1 from 60 to 80 percent. Of 1,058 private not-for-profit institutions with data, 679 had rates from 0 to 20 per cent, 328 from 20 to 40 percent, 51 from 40 to 60 percent, and none above 60 percent. Of 1,476 public institutions with data, 857 had rates from 0 to 20 per cent, 587 from 20 to 40 percent, 32 from 40 to 60 percent, and none above 60 percent.
State Licensing Agency.	Institution is cited by State licensing or authorizing agency for failing State or agency requirements.	
Financial Stress Test.	The institution fails a financial stress test used to evaluate whether the institution has sufficient resources to absorb losses that may be incurred as a result of adverse conditions and continue to meet its obligations to students and to the Secretary.	
Credit Rating	Institution or corporate parent has non-investment grade bond or credit rating.	According to Moody's Investors Services, it rates over 500 universities representing the majority of debt in the sector. This includes over 230 four-year public institutions, which are exempt from the financial protection triggers, and almost 275 private colleges and universities. Of these, only 12 were below the Baa3 rating for investment grade as of December 2014, but the report did note that downgrades were more common than upgrades.[74]
SEC 8–K Reporting	If an institution reports an adverse event to the SEC on a Form 8–K.	At least eight publicly traded institutions have reported events in Form 8–K filings, with most reporting multiple events in the past five years.

In addition to any resources institutions would devote to training or changes in business practices to improve compliance with the proposed regulations, institutions would incur costs associated with the reporting and disclosure requirements of the proposed regulations. This additional workload is discussed in more detail under *Paperwork Reduction Act of 1995*. In total, the proposed regulations are estimated to increase burden on institutions participating in the title IV, HEA programs by 384,293 hours. The monetized cost of this burden on institutions, using wage data developed using BLS data available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf*, is $14,045,915. This cost was based on an hourly rate of $36.55.

Guaranty Agencies and Loan Servicers

Several provisions may impose a cost on guaranty agencies or lenders, particularly the limits on interest capitalization. Loan servicers may have to update their process to accept electronic death certificates, but increased use of electronic documents should be more efficient over the long term. As indicated in the *Paperwork Reduction Act of 1995* section of this preamble, the proposed regulations are estimated to increase burden on guaranty agencies and loan servicers by 7,622 hours related to the mandatory forbearance for FFEL borrowers considering consolidation for a borrower defense claim and reviews of denied closed school claims. The monetized cost of this burden on guaranty agencies and loan servicers, using wage data developed using BLS data available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf*, is $278,584. This cost was based on an hourly rate of $36.55.

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[74] See Moody's Investors Service, *The Financial & Strategic Outlook for Private Colleges*, January 5, 2015, available at *www.cic.edu/News-and-Publications/Multimedia-Library/CICConference Presentations/2015%20Presidents%20Institute/20150105-The%20Financial%20and%20Strategic%20Outlook%20for%20Private%20Colleges%205.pdf*.

Federal, State, and Local Governments

In addition to the costs detailed in the *Net Budget Impacts* section of this analysis, the proposed regulations would affect the Federal government's administration of the title IV, HEA programs. The borrower defense process in the proposed regulations would provide a framework for handling claims in the event of significant institutional wrongdoing. The Department may incur some administrative costs or shifting of resources from other activities if the number of applications increases significantly and a large number of claims require hearings. Additionally, to the extent borrower defense claims are not reimbursed by institutions, Federal government resources that could have been used for other purposes will be transferred to affected borrowers. Taxpayers will bear the burden of these unreimbursed claims. In the scenarios presented in the *Net Budget Impacts* section of this analysis, annualized unreimbursed claims range from $64 million to $4.1 billion.

The accountability framework and financial protection triggers would provide some protection for taxpayers as well as potential direction for the Department and other Federal and State investigatory agencies to focus their enforcement efforts. The financial protection triggers may potentially assist the Department as it seeks to identify, and take action regarding, material actions and events that are likely to have an adverse impact on the financial condition or operations of an institution. In addition to the current process where, for the most part, the Department determines annually whether an institution is financially responsible based on its audited financial statements, under these proposed regulations the Department may determine at the time a material action or event occurs that the institution is not financially responsible.

Other Provisions

The technical corrections and additional changes in the proposed regulations should benefit student borrowers and the Federal government's administration of the title IV, HEA programs. Updates to the acceptable forms of certification for a death discharge would be more convenient for borrowers' families or estates and the Department. The provision for consolidation of Nurse Faculty Loans reflects current practice and gives those borrowers a way to combine the servicing of all their loans. Many of these technical corrections and changes involve relationships between the student borrowers and the Federal government, such as the clarification in the REPAYE treatment of spousal income and debt, and they are not expected to significantly impact institutions.

Net Budget Impacts

The proposed regulations are estimated to have a net budget impact in costs over the 2017–2026 loan cohorts ranging between $1.997 billion in the lowest impact scenario to $42.698 billion in the highest impact scenario. A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans.

The provisions most responsible for the costs of the proposed regulations are those related to the discharge of borrowers' loans, especially the changes to borrower defense and closed school discharges. When an institution engages in behavior that could result in successful borrower defense claims against it, there are several possible methods borrowers could pursue to obtain relief under the proposed regulations. If the level of misconduct and resulting investigations and demands for financial protection lead to the closure of the institution, borrowers that fall within the applicable timeframes may choose a closed school discharge. If applicable, borrowers could also consider a false certification discharge based on the institution falsely certifying the borrower's high school diploma or satisfactory academic progress. The cost of these two options is discussed in the *Closed School and False Certification Discharges* discussion of this *Net Budget Impacts* section. If the institution does not close, the borrower cannot or does not pursue closed school or false certification discharges, or the Secretary determines the borrower's claim is better suited to a borrower defense group process, the borrower may pursue a borrower defense claim.

Borrower Defense Discharges

The proposed regulations would establish a Federal standard for borrower defense claims related to loans first disbursed on or after July 1, 2017, as well as describe the process for the assertion and resolution of all borrower defense claims—both those made for Direct Loans first disbursed prior to July 1, 2017, and for those made under the proposed regulations after that date. As indicated in this preamble, while regulations governing borrower defense claims have existed since 1995, those regulations have rarely been used. Therefore, the Department has used the limited data it has available on borrower defense claims, especially information about the results of the collapse of Corinthian, projected loan volumes, Departmental expertise, the discussions at negotiated rulemaking, and information about past investigations into the type of institutional acts or omissions that would give rise to borrower defense claims to develop scenarios that the Department believes will capture the range of net budget impacts associated with the borrower defense proposed regulations. The Department will continue to refine these estimates, welcomes comments about the assumptions used in developing them, and will consider those comments as the final regulations are developed.

While there are many factors and details that will determine the cost of the proposed regulations, ultimately a borrower defense claim entered into the student loan model (SLM) by risk group, loan type, and cohort will result in a reduced stream of cash flows compared to what the Department would have expected from a particular cohort, risk group, and loan type. The net present value of the difference in those cash flow streams generates the expected cost of the proposed regulations. In order to generate an expected level of claims for processing in the SLM, the Department used President's Budget 2017 (PB2017) loan volume estimates to identify the maximum potential exposure to borrower defense claims for each cohort, loan type, and sector. While all of the PB2017 projected Direct Loan volume for the 2017 to 2026 cohorts of over $1 trillion is subject to the proposed regulations, the Department expects only a fraction of that amount to be affected by institutional behavior that results in a borrower defense claim (labeled as "Misrep Scenario" in Table 4). Additionally, while FFEL, Perkins, and certain other Federal student loan borrowers are able to claim relief under the Direct Loan process by consolidating into a Direct Loan, borrowers may choose not to consolidate because they may lose some benefits in doing so or because they have determined that their chances of success under the borrower defense process may not warrant the step of consolidation. As a result, the percentage of that volume that consolidates will also affect the estimated net budget impact. The budget impact would be further affected by the percentage of potentially eligible borrowers who successfully pursue a claim (labeled as "Borr Claim Pct" in Table 4) and the level of recoveries the Department is able to receive from institutions subject to borrower defense claims (labeled as "Recovery Pct" in Table 4). The scenarios presented in this budget estimate involve assumptions about these factors as shown in Table 4. The Department also faced a challenge in establishing the appropriate baseline against which to compare the costs of the regulation. Due to the limited history of borrower defense claims, existing budget estimates contain no data from which to devise a baseline. While many borrowers who will pursue a claim through the new process would have been able to do so under the existing standard, the Department is attributing their claims to the proposed regulations. That is, while the costs we are describing here are the actual projected costs of borrower defense discharges, not all of them are attributable to the new standard proposed in this regulation. Another factor that could mitigate the costs to the Federal government of the proposed regulations (and change the nature of the costs experienced by affected institutions) is that elimination or modification of the practices giving rise to borrower defense claims could improve outcomes for student borrowers. In the scenarios, we assume that 4-year institutions may be able to implement training or practice changes faster than some smaller 2-year institutions, resulting in a lower upper end of the range for the Misrep Scenario 2. To avoid underestimating the potential cost of the proposed regulations, the Department did not explicitly adjust its estimates for this factor.

TABLE 4—ASSUMPTIONS FOR BUDGET SCENARIOS

Sector	Misrep scenario 1 (% of volume)	Misrep scenario 2 (% of volume)	Borr claim pct A (% of volume)	Borr claim pct B (% of volume)	Recovery pct 1 (% of claim)	Recovery pct 2 (% of claim)
2yr or less public	0.5	2	10	75	30	65
2yr or less private not-for-profit	0.5	2	10	75	30	65
2yr or less private for profit	5	25	10	75	30	65
4yr public	0.5	1	10	75	30	65
4yr private not-for-profit	0.5	1	10	75	30	65
4yr private for profit	5	20	10	75	30	65

The combined application of these assumptions created the eight (= two Misrep Scenarios × two Borr Claim Pct × two Recovery Pct) scenarios evaluated in the SLM as an increase in the claims rate. Scenario 1A2, the lowest Federal budget impact scenario, assumes that institutional misconduct is not widespread, but instead limited to actors representing a small share of loan volume. It also assumes that the increased information about the availability of borrower defense relief does not lead to a significant increase in the percentage of borrowers making a claim, and that the Department recovers a substantial portion of successful claims from institutions. As shown in Table 4, the other end of the range is represented by Scenario 2B1, in which a high percentage of borrowers from institutions representing a significant percent of loan volume make successful claims and the Department is unable to recover a significant amount from institutions. The Department also estimated the impact if the Department received no recoveries from institutions for each combination of misrepresentation and borrower claim percentage scenario, the results of which are discussed after Table 5.

The Department does not specify how many institutions are represented in each scenario, as the scenario could represent a substantial number of institutions engaging in acts giving rise to borrower defense claims or could represent a small number of institutions with significant loan volume subject to a large number of claims. According to Federal Student Aid data center loan volume reports,[75] the five largest proprietary institutions in loan volume received 26 percent of Direct Loans disbursed in the proprietary sector in award year 2014–15 and the 50 largest represent 69 percent. The Department has not assigned specific probabilities to any of the scenarios and the results in Table 5 and the likelihood of any one scenario will depend on how institutions conduct their activities to ensure compliance, how much borrowers' awareness of their options increases, and the extent of the deterrent effect that the Department's and other agencies' efforts to uncover and sanction misconduct through investigations and enforcement may have on the industry.

TABLE 5—BUDGET ESTIMATES FOR BORROWER DEFENSE SCENARIOS

Scenario	Estimated costs for cohorts 2017–2026 ($mns)	Annualized cost to Federal Gov't (3% discounting)	Annualized cost to Federal Gov't (7% discounting)
1A1:	$1,297	$128	$127
1A2:	646	64	63

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[75] Federal Student Aid, *Student Aid Data: Title IV Program Volume by School,* available at *https://studentaid.ed.gov/sa/about/data-center/student/title-iv.*

TABLE 5—BUDGET ESTIMATES FOR BORROWER DEFENSE SCENARIOS—Continued

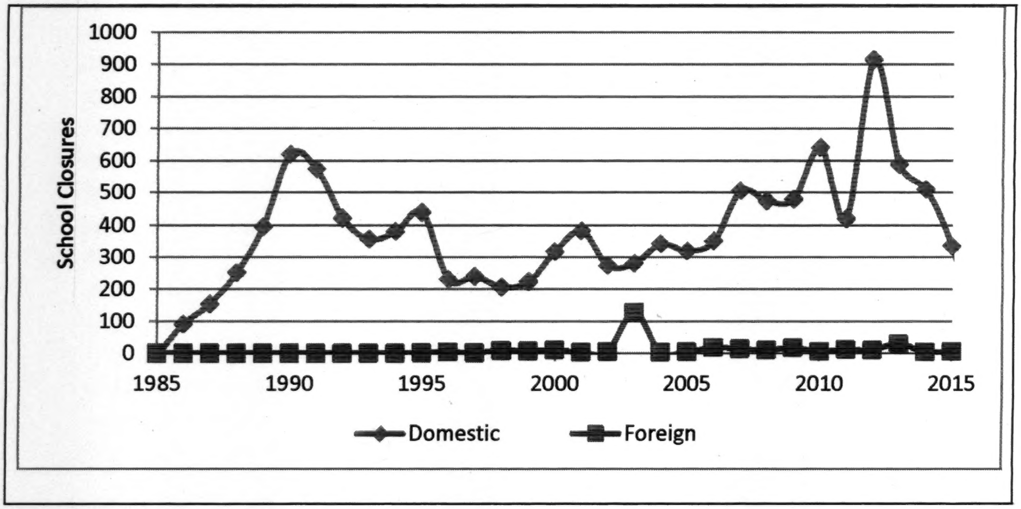
Scenario	Estimated costs for cohorts 2017–2026 ($mns)	Annualized cost to Federal Gov't (3% discounting)	Annualized cost to Federal Gov't (7% discounting)
1B1:	10,174	1,007	993
1B2:	5,072	502	446
2A1:	5,498	544	537
2A2:	2,752	272	269
2B1:	41,347	4,092	4,039
2B2:	20,674	2,046	2,020

The transfers among the Federal government and affected borrowers and institutions associated with each scenario above are included in Table 6, with the difference in amounts transferred to borrowers and received from institutions generating the budget impact in Table 5. In the absence of any recovery from institutions, taxpayers would bear the full cost of successful claims from affected borrowers. At a 3 percent discount rate, the annualized costs with no recovery are approximately $184 million for Misrep_Scenario_1 and Borr Claim_Pct_A, $1.44 billion for Misrep_Scenario_1 and Borr Claim_Pct_B, $778 million for Misrep_Scenario_2 and Borr Claim_Pct_A, and $5.85 billion for Misrep_Scenario_2 and Borr Claim_Pct_B. At a 7 percent discount rate, the annualized costs with no recovery are approximately $180 million for Misrep_Scenario_1 and Borr Claim_Pct_A, $1.42 billion for Misrep_Scenario_1 and Borr Claim_Pct_B, $768 million for Misrep_Scenario_2 and Borr Claim_Pct_A, and $5.77 billion for Misrep_Scenario_2 and Borr Claim_Pct_B. This potential increase in costs demonstrates the significant effect that recoveries from institutions have on the net budget impact of the borrower defense provisions.

Closed School Discharge and False Certification Discharges

In addition to the provisions previously discussed, the proposed regulations also would make changes to the closed school discharge process, which are estimated to cost $1.351 billion for cohorts 2017–2026. The proposed regulations include requirements to inform students of the consequences, benefits, requirements, and procedures of the closed school discharge option, including providing students with an application form, and establishes a Secretary-led discharge process for borrowers who qualify but do not apply and, according to the Department's information, did not subsequently re-enroll in any title IV-eligible institution within three years from the date the school closed. The increased information about and automatic application of the closed school discharge option and possible increase in school closures related to the institutional accountability provisions in the proposed regulations are likely to increase closed school claims. Chart 1 provides the history of closed schools, which totals 12,040 schools through April 2016.

Chart 1: History of School Closures



In order to estimate the effect of the proposed changes to the discharge process that would grant relief without an application after a three-year period, the Department looked at all Direct Loan borrowers at schools that closed from 2008–2011 to see what percentage of them had not received a closed school discharge and had no record of title-IV aided enrollment in the three years following their school's closure. Of 2,287 borrowers in the file, 47 percent had no record of a discharge or subsequent title IV aid. This does not necessarily mean they did not re-enroll at a title IV institution, so this assumption may overstate the potential effect of the three-year discharge provision. The Department used this information and the high end of closed school claims in recent years to estimate the effect of the proposed regulations related to closed school discharges. The resulting estimated cost to the Federal government of the closed school provisions is $1.351 billion over the 2017 to 2026 loan cohorts.

The proposed regulations would also change the false certification discharge process to include instances in which schools certified the eligibility of a borrower who is not a high school graduate (and does not meet applicable alternative to high school graduate requirements) where the borrower would qualify for a false certification discharge if the school falsified the borrower's high school graduation status; falsified the borrower's high school diploma; or referred the borrower to a third party to obtain a falsified high school diploma. Under existing regulations, false certification discharges represent a very low share of discharges granted to borrowers. The proposed regulations would replace the explicit reference to ability to benefit requirements in the false certification discharge regulations with a more general reference to requirements for admission without a high school diploma as applicable when the individual was admitted, and specify how an institution's certification of the eligibility of a borrower who is not a high school graduate (and does not meet applicable alternative to high school graduate requirements) could give rise to a false certification discharge claim. However, the Department does not expect an increase in false certification discharge claims to result in a significant budget impact from this change. We believe that schools that comply with the current ability to benefit assessment requirement and that honor the current high school graduation requirements will continue to comply in the manner they now do, and we have no basis to believe that changing the terminology or adding false certification of SAP as an example of a reason the Secretary may grant a false certification discharge without an application will lead to an increase in claims that will result in a significant net budget impact. The Department will continue to evaluate the changes to the false certification discharge regulations and welcomes comments to consider as the final analysis of the proposed regulations is developed.

Other Provisions

In addition to the provisions previously discussed, the proposed regulations would also make a number of technical changes related to the PAYE and REPAYE repayment plans and the consolidation of Nurse Faculty Loans, update the regulations describing the Department's authority to compromise debt, and update the acceptable forms of verification of death for discharge of title IV loans or TEACH Grant obligations. The technical changes to the REPAYE and PAYE plans were already reflected in the Department's budget estimates for those regulations, so no additional budget effects are included here. While some borrowers may be eligible for additional subsidized loans and no longer be responsible for accrued interest on their subsidized loans as a result of their subsidized usage period being eliminated or recalculated because of a closed school, false certification, unpaid refund, or defense to repayment discharge, the institutions primarily affected by the 150 percent subsidized usage regulation are not those expected to generate many of the applicable discharges, so this reflection of current practice is not expected to have a significant budget impact. Allowing death discharges based on death certificates submitted or verified through additional means is convenient for borrowers, but is not estimated to substantially change the amount of death discharges. The proposed updates to the debt compromise limits reflect statutory changes and the Secretary's existing authority to compromise debt, so we do not estimate a significant change in current practices. Revising the regulations to expressly permit the consolidation of Nurse Faculty Loans is not expected to have a significant budget impact, as this technical change reflects current practices. According to Department of Health and Human Services budget documents, approximately $26.5 million in grants are available annually for schools to make Nurse Faculty Loans, and borrowers would lose access to generous forgiveness terms if they choose to consolidate those loans. Therefore, we would expect the volume of consolidation to be very small, and do not estimate any significant budget impact from this provision.

Assumptions, Limitations, and Data Sources

In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System; operational and financial data from Department systems; and data from a range of surveys conducted by the National Center for Education Statistics such as the 2012 National Postsecondary Student Aid Survey. Data from other sources, such as the U.S. Census Bureau, were also used.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in annual monetized costs and transfers as a result of these proposed regulations. Expenditures are classified as transfers from the Federal Government to affected student loan borrowers or from affected institutions to students (via the Federal government), as noted.

TABLE 6—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES (IN MILLIONS) WITH DISCOUNT RATES OF THREE PERCENT AND SEVEN PERCENT

Category	Benefits
Updated and clarified borrower defense process and Federal standard to increase protection for student borrowers and taxpayers	not quantified
Improved awareness and usage of closed school and false certification discharges	not quantified
Improved consumer information about institutions' performance and practices	not quantified

TABLE 6—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES (IN MILLIONS) WITH DISCOUNT RATES OF THREE PERCENT AND SEVEN PERCENT—Continued

Category	Costs	
	3%	7%
Costs of obtaining Letters of credit or equivalents	not quantified	
Costs of compliance with paperwork requirements	14.95	14.91
Category	Transfers	
	3%	7%
Borrower Defense claims from the Federal government to affected borrowers (partially borne by affected institutions, via reimbursements):		
SC1A1	184	181
SC1A2	182	180
SC1B1	1,438	1,419
SC1B2	1,434	1,415
SC2A1	777	767
SC2A2	778	768
SC2B1	5,846	5,770
SC2B2	5,846	5,770
Reimbursements of borrower defense claims from affected institutions to affected student borrowers, via the Federal government:		
SC1A1	55	54
SC1A2	119	117
SC1B1	431	426
SC1B2	932	920
SC2A1	233	230
SC2A2	506	499
SC2B1	1,754	1,731
SC2B2	3,800	3,751
Closed school discharges from the Federal government to affected students	135	135

Alternatives Considered

In the interest of promoting good governance and ensuring that these proposed regulations produce the best possible outcome, the Department reviewed and considered various proposals from internal sources as well as from non-Federal negotiators and the public. We summarize below the major proposals that we considered but which we ultimately declined to implement in these proposed regulations.

Areas of significant discussion between the Department and the non-Federal negotiators included the group discharge process for borrower defense claims, the limitation periods, the appropriate procedure for considering borrower defense claims including the role of State AGs, legal assistance organizations, the Department, borrowers, and institutions, and the continued use of or adoption of certain State standards for borrower defense claims and the process of the Department's recovery from schools for any liabilities to the Department for borrower defense claims. The extensive discussion of these issues is summarized in the preamble sections related to each topic. In developing the proposed regulations, the Department considered the budgetary impact, administrative burden, and effectiveness of the options it considered.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 668.16.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Initial Regulatory Flexibility Analysis

Description of the Reasons That Action by the Agency Is Being Considered

The Secretary is proposing to amend the regulations governing the Direct Loan Program to establish a new Federal standard, limitation periods, and a process for determining whether a borrower has a borrower defense based on an act or omission of a school. We also propose to amend the Student Assistance General Provisions regulations to revise the financial responsibility standards and add disclosure requirements for schools. Finally, we propose to amend the discharge provisions in the Perkins Loan, Direct Loan, FFEL Program, and TEACH Grant programs. The proposed changes would provide transparency, clarity, and ease of administration to current and new regulations and protect students, the Federal government, and taxpayers against potential school liabilities resulting from borrower defenses.

The U.S. Small Business Administration Size Standards define "for-profit institutions" as "small businesses" if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. The standards define "non-profit institutions" as "small organizations" if they are independently owned and operated and not dominant in their field of operation, or as "small entities" if they are institutions controlled by governmental entities with populations below 50,000. Under these definitions, an estimated 4,365 institutions of higher education subject to the paperwork compliance provisions of the proposed regulations are small entities. Accordingly, we have prepared this initial regulatory flexibility analysis to present an estimate of the effect of the proposed regulations on small entities. The Department welcomes comments on this analysis and requests additional information to refine it.

Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Regulations

Section 455(h) of the HEA authorizes the Secretary to specify in regulation which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a Direct Loan. Current regulations in § 685.206(c) governing defenses to repayment have been in place since 1995, but rarely used. Those regulations specify that a borrower may assert as a defense to repayment any "act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law." In response to the collapse of Corinthian, the Secretary announced in June of 2015 that the Department would develop new regulations to clarify and streamline the borrower defense process, in a manner that would protect borrowers and allow the Department to hold schools accountable for actions that result in loan discharges.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Regulations Will Apply

These proposed regulations would affect institutions of higher education that participate in the Federal Direct Loan Program and borrowers. Approximately 60 percent of IHEs qualify as small entities, even though the range of revenues at the non-profit institutions varies greatly. Using data from the Integrated Postsecondary Education Data System, the Department estimates that approximately 4,365 IHEs qualify as small entities—1,891 are not-for-profit institutions, 2,196 are for-profit institutions with programs of two years or less, and 278 are for-profit institutions with four-year programs.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

Table 7 relates the estimated burden of each information collection requirement to the hours and costs estimated in the *Paperwork Reduction Act of 1995* section of the preamble. This additional workload is discussed in more detail under the *Paperwork Reduction Act of 1995* section of the preamble. Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. In total, these changes are estimated to increase burden on small entities participating in the title IV, HEA programs by 171,250 hours. The monetized cost of this additional burden on institutions, using wage data developed using BLS data available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf*, is $6,259,193. This cost was based on an hourly rate of $36.55.

TABLE 7—PAPERWORK REDUCTION ACT FOR SMALL ENTITIES

	Reg section	OMB Control No.	Hours	Cost
Program Participation Agreement—requires school to provide enrolled students a closed school discharge application and written disclosure of the benefits of consequences of the discharge as an alternative to completing their educational program through a teach-out.	668.14	OMB 1845–0022	939	$34,308
Reporting and Disclosure of repayment rate outcomes and letters of credit to enrolled and prospective students.	668.41	OMB 1845–0004	64,084	2,342,270
Financial Responsibility—reporting of actions or triggering events in 668.171(c) no later than 10 days after action or event occurs.	668.171	OMB 1845–0022	1,617	59,094
Alternative Standards and Requirements—ties amount of letter of credit to action or triggering event in 668.171(c).	668.175	OMB 1845–0022	32,336	1,181,881
Borrower defense process—provides a framework for the borrower defense process. Institutions could engage in fact-finding, provide evidence related to claims and appeal decisions.	685.222	OMB 1845–NEW	530	19,372
Agreements between an eligible school and the Secretary for participation in the Direct Loan Program—prohibits pre-dispute arbitration agreements for borrower defense claims, specifies required agreement and notification language, and requires schools to provide copies of arbitral and judicial filings to the Secretary.	685.300	OMB 1845–NEW2	71,745	2,622,268

Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap, or Conflict With the Regulations

The proposed regulations are unlikely to conflict with or duplicate existing Federal regulations.

Alternatives Considered

As described above, the Department participated in negotiated rulemaking when developing the proposed regulations, and considered a number of options for some of the provisions. Issues considered include the group discharge process for borrower defense claims, the limitation periods, the appropriate procedure for considering borrower defense claims including the role of State AGs, the Department, borrowers, and institutions, and the continued use of State standards for borrower defense claims. While no alternatives were aimed specifically at small entities, limiting repayment rate warnings to affected proprietary institutions will reduce the burden on the private not-for-profit institutions that are a significant portion of small entities that would be affected by the proposed regulations.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 668.14, 668.41, 668.171, 668.175, 682.211, 682.402, 685.222, and 685.300 contain information collection requirements. Under the PRA, the Department has submitted a copy of these sections and an Information Collections Request to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations, we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Discussion

Section § 668.14—Program Participation Agreement

Requirements

Proposed § 668.14(b)(32) would require, as part of the program participation agreement, a school to provide to all enrolled students a closed school discharge application and a written disclosure, describing the benefits and the consequences of a closed school discharge as an alternative to completing their educational program through a teach-out plan after the Department initiates any action to terminate the participation of the school in any title IV, HEA program or after the occurrence of any of the events specified in § 668.14(b)(31) that would require the institution to submit a teach-out plan.

Burden Calculation

From AY 2011–12 to 2014–15 there were 182 institutions that closed (30 private, 150 proprietary, and 2 public). The number of students who were enrolled at the institutions at the time of the closure was 43,299 (5,322 at the private institutions, 37,959 at the proprietary institutions, and 18 at the public institutions). With these figures as a base, we estimate that there could be 46 schools closing in a given award year (182 institutions divided by 4 = 45.5) with an average 238 students per institution (43,299 divided by 182 = 237.9).

We estimate that an institution will require two hours to prepare and process the required written disclosure with a copy of the closed school discharge application and the necessary mailing list for currently enrolled students. We anticipate that most schools will provide this information electronically to their students, thus decreasing burden and cost.

On average, we estimate that it will take the estimated 8 private institutions that will close a total of 324 hours (1,904 students × .17 (10 minutes)) to prepare and process the required written disclosure with a copy of the closed school discharge application and the necessary mailing list for the estimated 1,904 enrolled students.

On average, we estimate that it will take the estimated 38 proprietary institutions that will close a total of 1,537 hours (9,044 students × .17 (10 minutes)) to prepare and process the required written disclosure with a copy of the closed school discharge application and the necessary mailing list for the estimated 9,044 enrolled students.

For § 668.14, the total increase in burden will be 1,861 hours under OMB Control Number 1845–0022.

Section § 668.41—Reporting and Disclosure of Information

Requirements

Proposed § 668.41(h) would expand the reporting and disclosure requirements under § 668.41 to provide that, for any fiscal year in which a proprietary institution's loan repayment rate is equal to or less than zero, the institution must deliver a warning about its repayment outcomes to enrolled and prospective students. Institutions with fewer than 10 borrowers, or that meet the threshold for a low borrowing rate exemption, would not be required to make the disclosure.

The process through which a proprietary institution would be informed of its repayment rate, and provided the opportunity to challenge that rate, is included in proposed § 668.41(h)(5). Initially, the Department provides to each institution a list composed of students selected in accordance with the methodology in proposed § 668.41(h)(3) and discussed above, as well as the draft repayment rate and the underlying data used to make the calculation. A period of 45 days is allowed for institution to make corrections to the underlying data. The institution has 45 days following the date it receives notification of its draft loan repayment rate to challenge the accuracy of the information used by the Department to calculate the draft rate. After considering any challenges to its draft loan repayment rate, the Department notifies the institution of its final repayment rate.

Under proposed § 668.41(i), institutions that are required to provide financial protection, including an irrevocable letter of credit or cash under proposed § 668.175(d), or set-aside under proposed § 668.175(h), would have to disclose information about that requirement to both enrolled and prospective students until released from the letter of credit, or obligation to provide alternative financial protection, by the Department.

The loan repayment warning under proposed § 668.41(h) and the financial protection disclosure under proposed § 668.41(i) must be provided to both enrolled (§ 668.41(h)(7)(ii)) and prospective students (§ 668.41(h)(7)(iii)) by hand delivery as part of a separate document to the student individually or as part of a group presentation. Alternatively, the warning or disclosure may be sent to the primary email address or other electronic communication method used by the institution for communicating with the student. In all cases, the institution must ensure that the warning or disclosure is the only substantive content in the message unless the Secretary specifies additional, contextual language to be included in the message. Prospective students must be provided with the warning or disclosure before the student enrolls, registers, or enters into a financial obligation with the institution.

Under proposed § 668.41(h)(8), all promotional materials made available by or on behalf of an institution to prospective students must prominently include the loan repayment warning. All promotional materials, including printed materials, about an institution must be accurate and current at the time they are published, approved by a State agency or broadcast.

Burden Calculation

There will be burden on schools to review the list identified in § 668.41(h)(5)(i)(A) and to submit challenges to the accuracy of the information used to calculate the draft loan repayment rate, as provided in § 668.41(h)(5)(iii). Based on an analysis of College Scorecard repayment rate data for 1,174 proprietary institutions, we estimate that 493 proprietary institutions would not meet the zero percent or less threshold for the loan repayment rate calculations.

We estimate that it will take institutional staff 20 hours to review the listing of students included in the initial loan repayment rate calculations. We estimate that it will take institutional staff another 35 hours to review the draft loan repayment rate produced by the Secretary when challenging the accuracy of the information used to calculate that draft rate. We are estimating a total of 55 hours burden per institution for institutional activities under proposed § 668.41(h)(5).

We estimate that it will take proprietary institutions a total of 27,115 hours (493 institutions × 55 hours) for an initial review and subsequent challenge to information used in the calculation of the institution's repayment rate.

For § 668.41(h)(5), the total increase in burden related to the calculation, issuance, and challenges of the loan repayment rate will be 27,115 hours under OMB Control Number 1845–0004.

There will be burden on schools to deliver the loan repayment warning and the financial repayment disclosure to enrolled and prospective students under this proposed regulation.

For the loan repayment warning, under proposed § 668.41(h)(7)(i), the Department commits to consumer test the language of the warning, which the Secretary will publish in a **Federal Register** notice. We anticipate that it will take proprietary institutions a total of 32,045 hours (493 institutions × 65 hours) to produce and provide the loan repayment warnings to current and prospective students, ensure that promotional materials include the warning, and update the institution's Web site.

For § 668.41(h)(7), the total increase in burden related to the production and dissemination of the loan repayment warnings is 32,045 hours under OMB Control Number 1845–0004.

For the financial protection disclosure, we estimate that it will take institutions an additional 50 hours to produce and provide the required financial protection disclosures to current and prospective students and update the institution's Web site. We estimate that 169 private institutions may have 2 events requiring such reporting for a total burden of 16,900 hours (169 institutions × 2 events × 50 hours). We estimate that 392 proprietary institutions may have 3 events requiring such reporting for a total burden of 58,800 hours (392 institutions × 3 events × 50).

For § 668.41(i), the total increase in burden related to the production and dissemination of the financial protection disclosures is 75,700 hours under OMB Control Number 1845–0004.

The combined total increase in burden under OMB Control Number 1845–0004 for proposed § 668.41 will be 134,860 hours.

Financial Responsibility

General (34 CFR 668.171)

Requirements

Under proposed § 668.171(d), in accordance with procedures to be established by the Secretary, an institution would notify the Secretary of any action or triggering event described in proposed § 668.171(c) no later than 10 days after that action or event occurs.

In that notice, the institution may show that certain actions or events are not material or that those actions are resolved. Specifically:

- The institution may explain why a judicial or administrative proceeding the institution disclosed to the SEC does not constitute a material event.
- The institution may demonstrate that a withdrawal of owner's equity was used solely to meet tax liabilities of the institution or its owners. Or, where the composite score is calculated based on the consolidated financial statements of a group of institutions, the amount withdrawn from one institution in the group was transferred to another entity within that group.
- The institution may show that the creditor waived a violation of a loan agreement. If the creditor imposes additional constraints or requirements as a condition of waiving the violation and continuing with the loan, the institution must identify and describe those constraints or requirements. In addition, if a default or delinquency event occurs or other events occur that trigger, or enable the creditor to require or impose, additional constraints or penalties on the institution, the institution would be permitted to show why these actions would not have an adverse financial impact on the institution.

Burden Calculation

There will be burden on schools to provide the notice to the Secretary when one of the actions or triggering events identified in § 668.171(c) occurs. We estimate that an institution will take two hours per action or triggering event to prepare the appropriate notice and provide it to the Secretary. We estimate that 169 private institutions may have 2 events annually to report for a total burden of 676 hours (169 institutions × 2 events × 2 hours). We estimate that 392 proprietary institutions may have 3 events annually to report for total burden of 2,352 hours (392 institutions × 3 events × 2 hours). We estimate that 91 public institutions may have 1 event annually to report for a total burden of 182 hours (91 institutions × 1 event × 2 hours). This total burden of 3,210 hours will be assessed under OMB Control Number 1845–0022.

Alternative Standards and Requirements (34 CFR 668.175)

Requirements

Under the provisional certification alternative in § 668.175, we propose to add a new paragraph (f)(4) that ties the amount of the financial protection that an institution must submit to the Secretary to an action or triggering event described in proposed § 668.171(c). Specifically, under this alternative, an institution would be required to provide the Secretary financial protection, such as an irrevocable letter of credit, for an amount that is:

- For a State or Federal action under proposed § 668.171(c)(1)(i)(A) or (B), 10 percent or more, as determined by the Secretary, of the amount of Direct Loan program funds received by the institution during its most recently completed fiscal year; and
- For repayments to the Secretary for losses from borrower defense claims under proposed § 668.171(c)(2), the greatest annual loss incurred by the Secretary during the three most recently completed award years to resolve those claims or the amount of losses incurred by the Secretary during the most recently completed award year, whichever is greater, plus a portion of the amount of any outstanding or pending claims based on the ratio of the total value of claims resolved in favor of borrowers during the three most recently completed award years to the

total value of claims adjudicated during the three most completed award years;

- For any other action or triggering event described in proposed § 668.171(c), if the institution's composite score is less than 1.0, or the institution no longer qualifies under the zone alternative, 10 percent or more, as determined by the Secretary, of the total amount of title IV, HEA program funds received by the institution during its most recently completed fiscal year.

Burden Calculation

There will be burden on schools to provide the required financial protection, such as a letter of credit, to the Secretary to utilize the provisional certification alternative. We estimate that an institution will take 40 hours per action or triggering event to obtain the required financial protections and provide it to the Secretary. We estimate that 169 private not-for-profit institutions may have 2 events annually to report for a total burden of 13,520 hours (169 institutions × 2 events × 40 hours). We estimate that 392 proprietary institutions may have 3 events annually to report for total burden of 47,040 hours (392 institutions × 3 events × 40 hours). We estimate that 91 public institutions may have 1 event annually to report for a total burden of 3,640 hours (91 institutions × 1 event × 40 hours). This total burden of 64,200 hours will be assessed under OMB Control Number 1845–0022.

The combined total increase in burden under OMB Control Number 1845–0004 for proposed § 668.41 will be 134,860 (27,115 + 32,045 + 75,700) hours.

The combined total increase in burden under OMB Control Number 1845–0022 for proposed § 668.14, § 668.171, and § 668.175 will be 69,271 (1,861 + 3,210 + 64,200) hours.

Mandatory Administrative Forbearance for FFEL Program Borrowers (§ 682.211)

Requirements

Under proposed § 682.211(i)(7), a lender would be required to grant a mandatory administrative forbearance to a borrower upon being notified by the Secretary that the borrower has submitted an application for a borrower defense discharge related to a FFEL Loan that the borrower intends to pay off through a Direct Loan Program Consolidation Loan for the purpose of obtaining relief under proposed § 685.212(k). The administrative forbearance would remain in effect until the Secretary notifies the lender that a determination has been made as to the borrower's eligibility for a borrower defense discharge. If the Secretary notifies the borrower that the borrower would qualify for a borrower defense discharge if the borrower were to consolidate, the borrower would then be able to consolidate the loan(s) to which the defense applies and, if the borrower were to do so, the Secretary would recognize the defense and discharge that portion of the Consolidation Loan that paid off the FFEL Loan in question.

Burden Calculation

There will be burden for the current 1,446 FFEL lenders to track the required mandatory administrative forbearance when they are notified by the Secretary of the borrower's intention to enter their FFEL Loans into a Direct Consolidation Loan to obtain a borrower defense discharge. We estimate that it will take each lender approximately four hours to develop and program the needed tracking into their current systems. There will be an estimated burden of 5,480 hours on the 1,370 for-profit lenders (1,370 × 4 = 5,480 hours). There will be an estimated burden of 304 hours on the 76 not-for-profit lenders (76 × 4 = 304 hours). The total burden of 5,784 hours will be assessed under OMB Control Number 1845–0020.

Closed School Discharges—§ 682.402

Requirements

Proposed § 682.402(d)(6)(ii)(F) would provide a second level of Departmental review for denied closed school discharge claims in the FFEL Program. The proposed regulations would require a guaranty agency that denies a closed school discharge request to inform the borrower of the opportunity for a review of the guaranty agency's decision by the Secretary, and an explanation of how the borrower may request such a review.

Proposed § 682.402(d)(6)(ii)(I) would require the guaranty agency or the Department, upon resuming collection, to provide a FFEL borrower with another closed school discharge application, and an explanation of the requirements and procedures for obtaining the discharge.

Proposed § 682.402(d)(6)(ii)(K) would describe the responsibilities of the guaranty agency if the borrower requests such a review.

Proposed § 682.402(d)(8)(iii) would authorize the Department, or a guaranty agency with the Department's permission, to grant a closed school discharge to a FFEL borrower without a borrower application based on information in the Department's or guaranty agency's possession that the borrower did not subsequently re-enroll in any title IV-eligible institution within a period of three years after the school closed.

Burden Calculation

There will be burden on guaranty agencies to provide information to borrowers denied closed school discharge regarding the opportunity for further review of the discharge request by the Secretary. We estimate that it will take the 27 guaranty agencies 4 hours to update their notifications and establish a process for forwarding any requests for escalated reviews to the Secretary. There will be an estimated burden of 68 hours on the 17 public guaranty agencies (17 × 4 hours = 68 hours). There will be an estimated burden of 40 hours on the 10 not-for-profit guaranty agencies (10 × 4 hours = 40 hours). The total burden of 108 hours will be assessed under OMB Control Number 1845–0020.

There will be burden on guaranty agencies to, upon receipt of the request for escalated review from the borrower, forward to the Secretary the discharge form and any relevant documents. For the period between 2011 and 2015 there were 43,268 students attending closed schools, of which 9,606 students received a closed school discharge. It is estimated that 5 percent of the 43,268, or 2,163, closed school applications were denied. We estimate that 10 percent or 216 of those borrowers whose application was denied will request escalated review by the Secretary. We estimate that the process to forward the discharge request and any relevant documentation to the Secretary will take .5 hours (30 minutes) per request. There will be an estimated burden of 58 hours on the 17 public guaranty agencies based on an estimated 116 requests (116 × .5 hours = 58 hours). There will be an estimated burden of 50 hours on the 10 not-for-profit guaranty agencies (100 × .5 hours = 50 hours). The total burden of 108 hours will be assessed under OMB Control Number 1845–0020.

The guaranty agencies will have burden assessed based on these proposed regulations to provide another discharge application to a borrower upon resuming collection activities with explanation of process and requirements for obtaining a discharge. We estimate that for the 2,163 closed school applications that were denied, it will take the guaranty agencies .5 hours (30 minutes) to provide the borrower with another discharge application and instructions for filing the application again. There will be an estimated burden of 582 hours on the 17 public guaranty agencies based on an estimated 1,163 borrowers (1,163 × .5 hours = 582 hours). There will be an estimated burden of 500 hours on the 10 not-for-profit guaranty agencies (1,000 × .5 hours = 500 hours). The total burden of 1,082 will be assessed under OMB Control Number 1845–0020.

There will be burden assessed the guaranty agencies to determine the eligibility of a borrower for a closed school discharge without the borrower submitting such an application. This requires a review of those borrowers who attended a closed school but did not apply for a closed school discharge to determine if the borrower re-enrolled in any other institution within three years of the school closure. We estimate that there will be 20 hours of programming to allow for a guaranty agency to establish a process to review its records for borrowers who attended a closed school and to determine if any of those borrowers reenrolled in a title IV-eligible institution within three years. There will be an estimated burden of 340 hours on the 17 public guaranty agencies for this programming (17 × 20 hours = 340 hours rounded up). There will be an estimated burden of 200 hours on the not-for-profit guaranty agencies for this programming (10 × 20 hours = 200 hours). The total burden of 540 hours will be assessed under OMB Control Number 1845–0020.

The total burden of 1,838 hours for § 682.402 will be assessed under OMB Control Number 1845–0020.

The combined total increase in burden under OMB Control Number 1845–0020 for proposed § 682.211 and § 682.402 will be 7,622 hours (5,784 + 108 + 540 + 108 + 1,082).

Process for Individual Borrowers (34 CFR 685.222(e))

Requirements

Proposed § 685.222(e)(1) would describe the steps an individual borrower must take to initiate a borrower defense claim. First, an individual borrower would submit an application to the Secretary, on a form approved by the Secretary. In the application, the borrower would certify that he or she received the proceeds of a loan to attend a school; may provide evidence that supports the borrower defense; and would indicate whether he or she has made a claim with respect to the information underlying the borrower defense with any third party, and, if so, the amount of any payment received by the borrower or credited to the borrower's loan obligation. The borrower would also be required to provide any other information or supporting documentation reasonably requested by the Secretary.

While the decision of the Department official would be final as to the merits of the claim and any relief that may be warranted on the claim, if the borrower defense is denied in full or in part, the borrower would be permitted to request that the Secretary reconsider the borrower defense upon the identification of new evidence in support of the borrower's claim. "New evidence" would be defined as relevant evidence that the borrower did not previously provide and that was not identified by the Department official as evidence that was relied upon for the final decision.

Burden Calculation

There will be burden associated with the filing of the Departmental form by the borrower asserting a borrower defense claim. We are conducting a separate information collection review process for the proposed form to provide for public comment on the form as well as the estimated burden. A separate information collection review package will be published in the **Federal Register** and available through *Regulations.gov* for review and comment.

Additionally there will be burden on any borrower whose borrower defense claim is denied, if they elect to request reconsideration from the Secretary based on new evidence in support of the borrower's claim. We estimate that two percent of borrower defense claims received would be denied and those borrowers would then request reconsideration by presenting new evidence to support their claim. As of April 27, 2016, 18,688 borrower defense claims had been received. Of that number, we estimate that 467 borrowers, including those that opt out of a successful borrower defense group relief, would require .5 hours (30 minutes) to submit the request for reconsideration to the Secretary for a total of 234 burden hours (467 × .5 hours). This burden will be assessed under OMB Control Number 1845–NEW.

Group Process for Borrower Defenses—General (34 CFR 685.222(f))

Requirements

Proposed § 685.222(f) would provide a framework for the borrower defense group process, including descriptions of the circumstances under which group borrower defense claims could be considered, and the process the Department would follow for borrower defenses for a group.

Once a group of borrowers with common facts and claims has been identified, the Secretary would designate a Department official to present the group's common borrower defense in the fact-finding process, and would provide each identified member of the group with notice that allows the borrower to opt out of the proceeding.

Burden Calculation

There will be burden on any borrower who elects to opt out of the group process after the Secretary has identified them as a member of a group for purposes of borrower defense. We estimate that one percent of borrowers who are identified as part of a group process for borrower defense claims would opt out of the group claim process. As of April 27, 2016, 18,688 borrower defense claims had been received. Of that number, we estimate that 187 borrowers would require .08 hours (5 minutes) to submit the request to opt out of the group process to the Secretary for a total of 15 burden hours (187 × .08 hours). This burden will be assessed under OMB Control Number 1845–NEW.

Group Process for Borrower Defense—Closed School (34 CFR 685.222(g))

Requirements

Section 685.222(g) of the proposed regulations would establish a process for review and determination of a borrower defense for groups identified by the Secretary for which the borrower defense is made with respect to Direct Loans to attend a school that has closed and has provided no financial protection currently available to the Secretary from which to recover any losses based on borrower defense claims, and for which there is no appropriate entity from which the Secretary can otherwise practicably recover such losses.

Under proposed § 685.222(g)(1), a hearing official would review the Department official's basis for identifying the group and resolve the claim through a fact-finding process. As part of that process, the hearing official would consider any evidence and argument presented by the Department official on behalf of the group and on behalf of individual members of the group. The hearing official would consider any additional information the Department official considers necessary, including any Department records or response from the school or a person affiliated with the school as described § 668.174(b) as reported to the Department or as recorded in the Department's records if practicable.

Burden Calculation

There will be burden on any school which elects to provide records or response to the hearing official's fact finding. We anticipate that each group would represent a single institution. We estimate that there will be four potential groups involving closed schools. We estimate that the fact-finding process would require 50 hours from 1 private closed school or persons affiliated with that closed school (1 private institution × 50 hours). We estimate that the fact-finding process would require 150 hours from 3 proprietary closed schools or persons affiliated with that closed school (3 proprietary institutions × 50 hours). We estimate the burden to be 200 hours (4 institutions × 50 hours). This burden will be assessed under OMB Control Number 1845–NEW.

Group Process for Borrower Defense—Open School (34 CFR 685.222(h))

Requirements

Proposed § 685.222(h) would establish the process for groups identified by the Secretary for which the borrower defense is asserted with respect to Direct Loans to attend an open school.

A hearing official would resolve the borrower defense and determine any liability of the school through a fact-finding process. As part of the process, the hearing official would consider any evidence and argument presented by the school and the Department official on behalf of the group and, as necessary, evidence presented on behalf of individual group members.

The hearing official would issue a written decision. If the hearing official approves the borrower defense, that decision would describe the basis for the determination, notify the members of the group of the relief provided on the basis of the borrower defense, and notify the school of any liability to the Secretary for the amounts discharged and reimbursed.

If the hearing official denies the borrower defense in full or in part, the written decision would state the reasons for the denial, the evidence that was relied upon, the portion of the loans that are due and payable to the Secretary, and whether reimbursement of amounts previously collected is granted, and would inform the borrowers that their loans will return to their statuses prior to the group borrower defense process. It also would notify the school of any liability to the Secretary for any amounts discharged. The Secretary would provide copies of the written decision to the members of the group, the Department official and the school.

The hearing official's decision would become final as to the merits of the group borrower defense claim and any relief that may be granted within 30 days after the decision is issued and received by the Department official and the school unless, within that 30-day period, the school or the Department official appeals the decision to the Secretary. A decision of the hearing official would not take effect pending the appeal. The Secretary would render a final decision following consideration of any appeal.

After a final decision has been issued, if relief for the group has been denied in full or in part, a borrower may file an individual claim for relief for amounts not discharged in the group process. In addition, the Secretary may reopen a borrower defense application at any time to consider new evidence, as discussed above.

Burden Calculation

There will be burden on any school that provides evidence and responds to any argument made to the hearing official's fact finding and if the school elects to appeal the final decision of the hearing official regarding the group claim. We anticipate that each group would represent claims from a single institution. We estimate that there will be six potential groups involving open schools. We estimate that the fact-finding process would require 150 hours from the 3 open private institutions or persons affiliated with that school (3 institutions × 50 hours). We estimate that the fact-finding process would require 150 hours from the 3 open proprietary institutions or persons affiliated with that school (3 institutions × 50 hours). We estimate the burden to be 300 hours (6 institutions × 50 hours).

We further estimate that the appeal process would require 150 hours from the 3 open private institutions or persons affiliated with that school (3 institutions × 50 hours). We estimate that the appeal process would require 150 hours from the 3 open proprietary institutions or persons affiliated with that school (3 institutions × 50 hours). We estimate the burden to be 300 hours (6 institutions × 50 hours). The total estimated burden for this section will be 600 hours assessed under OMB Control Number 1845–NEW.

Additionally, any borrower whose borrower defense claim is denied under the group claim may request reconsideration based on new evidence to support the individual claim. We believe that the estimate for the total universe of denied claims in § 685.222(e) includes these borrowers.

The combined total increase in burden under OMB Control Number 1845–NEW for proposed § 685.222 will be 1,049 hours (234 + 15 + 200 + 600).

Section 685.300 Agreements Between an Eligible School and the Secretary for Participation in the Direct Loan Program

Requirements

Proposed § 685.300(e) requires institutions that, after the effective date of the proposed regulations, incorporate pre-dispute arbitration or any other pre-dispute agreement addressing class actions in any agreements with Direct Loan Program borrowers to include specific language regarding a borrower's right to file or be a member of a class action suit against the institution when the class action concerns acts or omissions surrounding the making of the Direct Loan or provision of educational services purchased with the Direct Loan. Additionally, in the case of institutions that, prior to the effective date of the proposed regulations, incorporated pre-dispute arbitration or any other pre-dispute agreement addressing class actions in any agreements with Direct Loan Program borrowers, the proposed regulations would require institutions to provide to borrowers agreements or notices with specific language regarding a borrower's right to file or be a member of a class action suit against the institution when the class action concerns acts or omissions surrounding the making of the Direct Loan or provision of educational services purchased with the Direct Loan. Institutions would be required to provide such notices or agreements to such borrowers no later than at the time of the loan exit counseling for current students or the date the school files an initial response to an arbitration demand or complaint suit from a student who hasn't received such agreement or notice.

Proposed § 685.300(f) would require institutions that, after the effective date of the proposed regulations, incorporate pre-dispute arbitration agreements with Direct Loan Program borrowers to include specific language regarding a borrower's right to file a lawsuit against the institution when it concerns acts or omissions surrounding the making of the Direct Loan or provision of educational services purchased with the Direct Loan. Additionally, in the case of institutions that, prior to the effective date of the proposed regulations, incorporated pre-dispute arbitration agreements with Direct Loan Program borrowers, the proposed regulations would require institutions to provide to borrowers agreements or notices with specific language regarding a borrower's right to file a lawsuit against the institution when the class action concerns acts or omissions surrounding the making of the Direct Loan or provision of educational services purchased with the Direct Loan. Institutions would be required to provide such agreements or notices to such borrowers no later than at the time of the loan exit counseling for current students or the date the school files an initial response to an arbitration demand or complaint suit from a student who hasn't received such agreement or notice.

Burden Calculation

There will be burden on any school that meets the conditions for supplying students with the changes to any agreements. Based on the AY 2014–2015 Direct Loan information available, there were 1,528,714 Unsubsidized Direct Loan recipients at proprietary institutions. Assuming 66 percent of these students would continue to be enrolled at the time these regulations become effective there would be 1,008,951 students who would be required to receive the agreements or notices required by proposed § 685.300(e) or (f). We anticipate that it will take proprietary institutions .17 hours (10 minutes) per student to research who is required to receive these agreements or notices, prepare them, and forward the information accordingly for a total burden of 171,522 hours (1,008,951 students × .17 hours) assessed under OMB Control Number 1845–NEW2.

Requirements

Proposed § 685.300(g) requires institutions to provide to the Secretary copies of specified records connected to a claim filed in arbitration by or against the school regarding a borrower defense claim. The school must submit any records within 60 days of the filing by the school of such records to an arbitrator or upon receipt by the school of such records that were filed by someone other than the school, such as an arbitrator or student regarding a claim.

Proposed § 685.300(h) requires institutions to provide to the Secretary copies of specified records connected to a claim filed in a lawsuit by the school, a student, or any party against the school regarding a borrower defense claim. The school must submit any records within 30 days of the filing or receipt of the complaint by the school or upon receipt by the school of rulings on a dipositive motion or final judgement.

Burden Calculation

There will be burden on any school that must provide to the Secretary copies of specified records connected to a claim filed in arbitration by or against the school regarding a borrower defense claim. We estimate that 5 percent of the 1,959 proprietary schools, or 98 schools, would be required to submit documentation to the Secretary to comply with the proposed regulations. We anticipate that each of the 98 schools would have an average of 4 filings, with an average of four submissions for each filing. Because these are copies of documents required to be submitted to other parties we anticipate 5 burden hours to produce the copies and submit to the Secretary for a total of 7,840 hours (98 institutions × 4 filings × 4 submissions/filing × 5 hours) assessed under OMB Control Number 1845–NEW2.

The combined total increase in burden under OMB Control Number 1845–NEW2 for proposed § 685.300 will be 179,362 hours (171,522 + 7,840).

Consistent with the discussion above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on institutions, lenders, guaranty agencies, and borrowers, using wage data developed using BLS data, available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $14,328,558 as shown in the chart below. This cost was based on an hourly rate of $36.55 for institutions, lenders, and guaranty agencies and $16.30 for borrowers.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
§ 668.14 Program participation agreement.	The proposed regulation would require, as part of the program participation agreement, a school to provide to all enrolled students with a closed school discharge application and a written disclosure, describing the benefits and the consequences of a closed school discharge as an alternative to completing their educational program through a teach-out plan after the Department initiates any action to terminate the participation of the school in any title IV, HEA program or after the occurrence of any of the events specified in § 668.14(b)(31) that would require the institution to submit a teach-out plan.	1845–0022 This would be a revised collection. We estimate burden would increase by 1,861 hours.	$68,025
§ 668.41 Reporting and disclosure of information.	The proposed regulation would provide that, for any fiscal year in which a proprietary institution's loan repayment rate is zero percent or less, the institution must provide a warning to enrolled and prospective students about that institution's repayment outcomes. If an institution is required to provide financial protection to the Secretary, such as an irrevocable letter of credit or cash under § 668.175(d) or (f), or to establish a set-aside under § 668.175(h), the institution must disclose that protection to enrolled and prospective students.	1845–0004 This would be a revised collection. We estimate burden would increase by 134,860 hours.	4,929,133
§ 668.171 Financial responsibility—General.	The proposed regulations add a new paragraph (d) under which, in accordance with procedures to be established by the Secretary, an institution would notify the Secretary of any action or triggering event described in § 668.171(c) no later than 10 days after that action or event occurs.	1845–0022 This would be a revised collection. We estimate burden would increase by 3,210 hours.	117,326

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
§ 668.175 Alternative standards and requirements.	The proposed regulations would add a new paragraph (f)(4) that ties the amount of the letter of credit that an institution must submit to the Secretary to an action or triggering event described in § 668.171(c).	1845–0022 .... This would be a revised collection. We estimate burden would increase by 64,200 hours.	2,346,510
§ 682.211 Forbearance.	The proposed regulations would add a new paragraph § 682.211(i)(7) that requires a lender to grant a mandatory administrative forbearance to a borrower upon being notified by the Secretary that the borrower has submitted an application for a borrower defense discharge related to a FFEL Loan that the borrower intends to pay off through a Direct Loan Program Consolidation Loan for the purpose of obtaining relief under proposed § 685.212(k).	1845–0020 .... This would be a revised collection. We estimate burden would increase by 5,784 hours.	211,405
§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.	The proposed regulations would provide a second level of Departmental review for denied closed school discharge claims in the FFEL Program. The proposed language would require a guaranty agency that denies a closed school discharge request to inform the borrower of the opportunity for a review of the guaranty agency's decision by the Department, and an explanation of how the borrower may request such a review. The proposed regulations would require the guaranty agency or the Department, upon resuming collection, to provide a FFEL borrower with another closed school discharge application, and an explanation of the requirements and procedures for obtaining the discharge. The proposed regulations would describe the responsibilities of the guaranty agency if the borrower requests such a review. The proposed regulations would authorize the Department, or a guaranty agency with the Department's permission, to grant a closed school discharge to a FFEL borrower without a borrower application based on information in the Department's or guaranty agency's possession that the borrower did not subsequently re-enroll in any title IV-eligible institution within a period of three years after the school closed.	1845–0020 .... This would be a revised collection. We estimate burden would increase by 1,838 hours.	67,179
§ 685.222 Borrower defenses.	The proposed regulation would describe the steps an individual borrower must take to initiate a borrower defense claim. The proposed regulations also would provide a framework for the borrower defense group process, including descriptions of the circumstances under which group borrower defense claims could be considered, and the process the Department would follow for borrower defenses for a group. The proposed regulations would establish a process for review and determination of a borrower defense for groups identified by the Secretary for which the borrower defense is made with respect to Direct Loans to attend a school that has closed and has provided no financial protection currently available to the Secretary from which to recover any losses based on borrower defense claims, and for which there is no appropriate entity from which the Secretary can otherwise practicably recover such losses. The proposed regulation would establish the process for groups identified by the Secretary for which the borrower defense is asserted with respect to Direct Loans to attend an open school.	1845–NEW .... This would be a new collection. We estimate burden would increase by 1,049 hours.	33,299
685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.	The proposed regulations would require institutions, following the effective date of the regulations, to incorporate language into agreements allowing participation by Direct Loan students in class action lawsuits as well as pre-dispute arbitration agreements. There is required agreement and notification language to be provided to affected students. Additionally, the proposed regulations would require institutions to submit to the Secretary copies of arbitral records and judicial records within specified timeframes when the actions concern a borrower defense claim.	1845–NEW2 .... This would be a new collection. We estimate burden would increase by 179,362 hours.	6,555,681

The total burden hours and change in burden hours associated with each OMB Control number affected by the proposed regulations follows:

Control No.	Total proposed burden hours	Proposed change in burden hours
1845–0004	153,530	134,860
1845–0020	8,249,520	+7,622
1845–0022	2,285,241	+69,271
1845–NEW	1,049	+1,049
1845–NEW2	179,362	+179,362
Total	10,868,702	+392,164

We have prepared Information Collection Requests for these information collection requirements. If you want to review and comment on the Information Collection Requests, please follow the instructions in the **ADDRESSES** section of this NPRM.

Note: The Office of Information and Regulatory Affairs in OMB and the Department review all comments posted at *www.regulations.gov.*

In preparing your comments, you may want to review the Information Collection Requests, including the supporting materials, in *www.regulations.gov* by using the Docket ID number specified in this NPRM. These proposed collections are identified as proposed collections 1845–0004, 1845–0020, 1845–0022, 1845–NEW, and 1845–NEW2.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Between 30 and 60 days after publication of this document in the **Federal Register**, OMB is required to make a decision concerning the collections of information contained in these proposed regulations. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on these Information Collection Requests by July 18, 2016. This does not affect the deadline for your comments to us on the proposed regulations.

If your comments relate to the Information Collection Requests for these proposed regulations, please specify the Docket ID number and indicate "Information Collection Comments" on the top of your comments.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects

34 CFR Part 30

Claims, Income taxes.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 674

Loan programs—education, Reporting and recordkeeping, Student aid.

34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 686

Administrative practice and procedure, Colleges and universities, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: June 9, 2016.

John B. King, Jr.,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend parts 30, 668, 674, 682, 685, and 686 of title 34 of the Code of Federal Regulations as follows:

PART 30—DEBT COLLECTION

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), and 1226a–1, 31 U.S.C. 3711(e), 31 U.S.C. 3716(b) and 3720A, unless otherwise noted.

■ 2. Section 30.70 is revised to read as follows:

§ 30.70 How does the Secretary exercise discretion to compromise a debt or to suspend or terminate collection of a debt?

(a)(1) The Secretary uses the standards in the FCCS, 31 CFR part 902, to determine whether compromise of a debt is appropriate if the debt arises under a program administered by the Department, unless compromise of the debt is subject to paragraph (b) of this section.

(2) If the amount of the debt is more than $100,000, or such higher amount as the Department of Justice may prescribe, the Secretary refers a proposed compromise of the debt to the Department of Justice for approval, unless the compromise is subject to paragraph (b) of this section or the debt is one described in paragraph (e) of this section.

(b) Under the provisions in 34 CFR 81.36, the Secretary may enter into certain compromises of debts arising because a recipient of a grant or cooperative agreement under an applicable Department program has spent some of these funds in a manner that is not allowable. For purposes of this section, neither a program authorized under the Higher Education

Act of 1965, as amended (HEA), nor the Impact Aid Program is an applicable Department program.

(c)(1) The Secretary uses the standards in the FCCS, 31 CFR part 903, to determine whether suspension or termination of collection action on a debt is appropriate.

(2) Except as provided in paragraph (e), the Secretary—

(i) Refers the debt to the Department of Justice to decide whether to suspend or terminate collection action if the amount of the debt outstanding at the time of the referral is more than $100,000 or such higher amount as the Department of Justice may prescribe; or

(ii) May suspend or terminate collection action if the amount of the debt outstanding at the time of the Secretary's determination that suspension or termination is warranted is less than or equal to $100,000 or such higher amount as the Department of Justice may prescribe.

(d) In determining the amount of a debt under paragraph (a), (b), or (c) of this section, the Secretary deducts any partial payments or recoveries already received, and excludes interest, penalties, and administrative costs.

(e)(1) Subject to paragraph (e)(2) of this section, under the provisions of 31 CFR part 902 or 903, the Secretary may compromise a debt in any amount, or suspend or terminate collection of a debt in any amount, if the debt arises under the Federal Family Education Loan Program authorized under title IV, part B, of the HEA, the William D. Ford Federal Direct Loan Program authorized under title IV, part D of the HEA, or the Perkins Loan Program authorized under title IV, part E, of the HEA.

(2) The Secretary refers a proposed compromise, or suspension or termination of collection, of a debt that exceeds $1,000,000 and that arises under a loan program described in paragraph (e)(1) of this section to the Department of Justice for review. The Secretary does not compromise, or suspend or terminate collection of, a debt referred to the Department of Justice for review until the Department of Justice has provided a response to that request.

(f) The Secretary refers a proposed resolution of a debt to the Government Accountability Office (GAO) for review and approval before referring the debt to the Department of Justice if—

(1) The debt arose from an audit exception taken by GAO to a payment made by the Department; and

(2) The GAO has not granted an exception from the GAO referral requirement.

(g) Nothing in this section precludes—

(1) A contracting officer from exercising his authority under applicable statutes, regulations, or common law to settle disputed claims relating to a contract; or

(2) The Secretary from redetermining a claim.

(h) Nothing in this section authorizes the Secretary to compromise, or suspend or terminate collection of, a debt—

(1) Based in whole or in part on conduct in violation of the antitrust laws; or

(2) Involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim.

(Authority: 20 U.S.C. 1082(a)(5) and (6), 1087a, 1087hh, 1221e–3(a)(1), 1226a–1, and 1234a, 31 U.S.C. 3711)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 3. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221–3, and 1231a, unless otherwise noted.

■ 4. Section 668.14 is amended by:

■ A. In paragraph (b)(30)(ii)(C), removing the word "and".

■ B. In paragraph (b)(31)(v), removing the period and adding, in its place, the punctuation and word "; and".

■ C. Adding a new paragraph (b)(32).

The addition reads as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(32) The institution will provide all enrolled students with a closed school discharge application and a written disclosure, describing the benefits and consequences of a closed school discharge as an alternative to completing their educational program through a teach-out agreement, as defined in 34 CFR 602.3, immediately upon submitting a teach-out plan after the occurrence of any of the following events:

(i) The initiation by the Secretary of an action to terminate the participation of an institution in any title IV, HEA program under 34 CFR 600.41 or subpart G of this part or the initiation of an emergency action under § 668.83; or

(ii) The occurrence of any of the events in paragraph (b)(31)(ii)–(v) of this section.

* * * * *

■ 5. Section 668.41 is amended by:

■ A. Adding new paragraphs (h) and (i).

■ B. Revising the authority citation.

The additions and revision read as follows:

§§ 668.41 Reporting and disclosure of information.

* * * * *

(h) *Loan repayment warning for proprietary institutions*—(1) *General.* For any fiscal year in which a proprietary institution's loan repayment rate is equal to or less than zero, the institution must deliver a warning to enrolled and prospective students in the manner described in paragraphs (h)(7) and (8) of this section.

(2) *Definitions.* For purposes of this section, the term—

(i) "Fiscal year" means the 12-month period beginning on October 1 and ending on the following September 30 that is identified by the calendar year in which it ends;

(ii) "Original outstanding balance" (OOB) means the amount of the outstanding balance, including accrued interest, on the Direct Loans owed by a student for enrollment at the institution on the date the loans first entered repayment. The OOB does not include PLUS loans made to parent borrowers or TEACH Grant-related loans. For consolidation loans, the OOB includes only those loans attributable to the borrower's enrollment at the institution;

(iii) "Current outstanding balance" (COB) means the amount of the outstanding balance, including capitalized and uncapitalized interest, on the Direct Loans owed by the student at the end of the most recently completed fiscal year; and

(iv) "Measurement period" is the period of time between the date that a borrower's loan enters repayment and the end of the fiscal year for which the COB of that loan is determined.

(3) *Methodology.* For each fiscal year, the Secretary calculates an institution's loan repayment rate for the cohort of borrowers whose Direct Loans entered repayment at any time during the fifth fiscal year prior to the most recently completed fiscal year by—

(i) Determining the OOB of the loans for each of those borrowers;

(ii) Determining the COB of the loans for each of those borrowers;

(iii) Calculating the difference between the OOB and the COB of the loans for each of those borrowers and expressing that difference as a percentage reduction of, or an increase in, the OOB;

(iv) Using zero as the value for any loan on which the borrower defaulted for which there is a percentage reduction of the OOB; and

(v) On a scale where percentage reductions in principal are positive values and percentage increases in principal are negative values, determining the median value. The median value is the loan repayment rate for that fiscal year.

(4) *Exclusions.* The Secretary excludes a borrower from the calculation of the loan repayment rate if—

(i) One or more of the borrower's loans were in a military-related deferment status during the last fiscal year of the measurement period;

(ii) One or more of the borrower's loans are either under consideration by the Secretary, or have been approved, for a discharge on the basis of the borrower's total and permanent disability, under § 685.213;

(iii) The borrower was enrolled in an eligible institution during the last fiscal year of the measurement period; or

(iv) The borrower died.

(5) *Issuing and correcting loan repayment rates.* In accordance with procedures established by the Secretary—

(i) Before issuing a final loan repayment rate for a fiscal year, the Secretary—

(A) Provides to the institution a list of the students in the cohort described in paragraph (h)(3) of this section, the draft repayment rate for that cohort, and the information used to calculate the draft rate; and

(B) Allows 45 days for the institution to challenge the accuracy of the information that the Secretary used to calculate the draft rate; and

(ii) After considering any challenges to the draft loan repayment rate, the Secretary notifies the institution of its final repayment rate.

(iii) If an institution's final loan repayment rate is equal to or less than zero—

(A) Using the calculation described in paragraph (h)(6)(ii) of this section, the institution may submit an appeal to the Secretary within 15 days of receiving notification of its final repayment rate; and

(B) The Secretary will notify the institution if the appeal is accepted and the institution qualifies for an exemption from the warning requirement under paragraph (h)(7) of this section.

(6) *Privacy and low borrowing considerations.* An institution is not required to deliver a warning under paragraph (h)(7) of this section based on a final repayment rate for that fiscal year if the institution demonstrates to the Secretary's satisfaction that—

(i) That rate is based on fewer than 10 borrowers in the cohort described in paragraph (h)(3) of this section; or

(ii) The institution's participation rate index is less than or equal to 0.0625. An institution calculates its participation rate index as if its cohort default rate were 30 percent, using the formula described in § 668.214(b)(1).

(7) *Student warnings* — (i) *General.* An institution must deliver the warning required under this section to enrolled and prospective students in a form and manner prescribed by the Secretary in a notice published in the **Federal Register**. Before publishing that notice, the Secretary will conduct consumer testing to help ensure that the warning is meaningful and helpful to students.

(ii) *Delivery to enrolled students.* An institution must deliver the warning required under this section by notifying each enrolled student in writing no later than 30 days after the Secretary informs the institution of its final loan repayment rate by—

(A)(*1*) Hand-delivering the warning as a separate document to the student individually or as part of a group presentation; or

(*2*) Sending the warning to the student's primary email address or delivering the warning through the electronic method used by the institution for communicating with the student about institutional matters; and

(B) Ensuring that the warning is the only substantive content in the message sent to the student under this paragraph unless the Secretary specifies additional, contextual language to be included in the message.

(iii) *Delivery to prospective students.* An institution must provide the warning required under this paragraph (h) to a prospective student before that student enrolls, registers, or enters into a financial obligation with the institution by—

(A)(*1*) Hand-delivering the warning as a separate document to the student individually, or as part of a group presentation; or

(*2*) Sending the warning to the student's primary email address or delivering the warning through the electronic method used by the institution for communicating with prospective students about institutional matters; and

(B) Ensuring that the warning is the only substantive content in the message sent to the student under this paragraph unless the Secretary specifies additional, contextual language to be included in the message.

(8) *Promotional materials.* (i) If an institution is required to deliver a warning under paragraph (h)(1) of this section, it must, in all promotional materials that are made available to prospective or enrolled students by or on behalf of the institution, include the warning under paragraph (h)(7) of this section, in a prominent manner.

(ii) Promotional materials include, but are not limited to, an institution's Web site, catalogs, invitations, flyers, billboards, and advertising on or through radio, television, print media, social media, or the Internet.

(iii) The institution must ensure that all promotional materials, including printed materials, about the institution are accurate and current at the time they are published, approved by a State agency, or broadcast.

(9) *Institutional Web site.* (i) An institution must prominently provide the warning required in this section in a simple and meaningful manner on the home page of the institution's Web site.

(ii) The warning must be posted to the institution's Web site no later than 30 days after the date the Secretary informs the institution of its final loan repayment rate, and remain posted to that Web site for the 12-month period following the date on which the Secretary informs the institution of its final loan repayment rate.

(i) *Financial protection disclosures.* If an institution is required to provide financial protection to the Secretary, such as an irrevocable letter of credit or cash under § 668.175(d) or (f), or to establish a set-aside under § 668.175(h), the institution must—

(1) Disclose information about that financial protection to enrolled and prospective students in the manner described in paragraph (h)(7) of this section;

(2) Post the disclosure on the home page of the institution's Web site in the manner described in paragraph (h)(9) of this section no later than 30 days after the date the Secretary informs the institution of the need for the institution to provide financial protection, until such time as the Secretary releases the institution from the requirement that it provide financial protection; and

(3) Identify and explain clearly in that disclosure the reason or reasons that the institution was required to provide that financial protection.

(Authority: 20 U.S.C. 1092, 1094, 1099c)

§ 668.71 [Amended]

■ 6. Section 668.71 is amended by:

■ A. In the second sentence of the definition of "Misrepresentation" in paragraph (c), removing the word "deceive" and adding in its place the words "mislead under the circumstances".

■ B. In the definition of "Misrepresentation" in paragraph (c), adding a new fourth sentence, "Misrepresentation includes any statement that omits information in such a way as to make the statement false, erroneous, or misleading."

■ 7. Section 668.90 is amended by revising paragraph (a)(3) to read as follows:

§ 668.90 Initial and final decisions.

(a) * * *

(3) Notwithstanding the provisions of paragraph (a)(2) of this section—

(i) If, in a termination action against an institution, the hearing official finds that the institution has violated the provisions of § 668.14(b)(18), the hearing official also finds that termination of the institution's participation is warranted;

(ii) If, in a termination action against a third-party servicer, the hearing official finds that the servicer has violated the provisions of § 668.82(d)(1), the hearing official also finds that termination of the institution's participation or servicer's eligibility, as applicable, is warranted;

(iii) In an action brought against an institution or third-party servicer that involves its failure to provide a letter of credit or other financial protection in the amount specified by the Secretary under § 668.15 or subpart L of part 668, the hearing official finds that the amount of the letter of credit or other financial protection established by the Secretary is appropriate, unless the institution can demonstrate that the amount was not warranted because—

(A) The events or conditions identified by the Secretary as the grounds on which the protection is required no longer exist or have been resolved in a manner that eliminates the risk they posed to the institution's ability to meet its financial obligations; or

(B) The institution has proffered alternative financial protection that provides students and the Department adequate protection against losses resulting from the risks identified by the Secretary. Adequate protection consists of one or both of the following—

(*1*) A deposit with the Secretary of cash in the amount of financial protection demanded by the Secretary to be held by the Secretary in escrow; or

(*2*) An agreement with the Secretary that a portion of the funds earned by the institution under a reimbursement funding arrangement will be temporarily withheld in such amounts as will meet, by the end of a nine-month period, the amount of the required financial protection demanded;

(iv) In a termination action taken against an institution or third-party servicer based on the grounds that the institution or servicer failed to comply with the requirements of § 668.23(c)(3), if the hearing official finds that the institution or servicer failed to meet those requirements, the hearing official finds that the termination is warranted;

(v)(A) In a termination action against an institution based on the grounds that the institution is not financially responsible under § 668.15(c)(1), the hearing official finds that the termination is warranted unless the institution demonstrates that all applicable conditions described in § 668.15(d)(4) have been met; and

(B) In a termination or limitation action against an institution based on the grounds that the institution is not financially responsible—

(*1*) Upon proof of the conditions in § 668.174(a), the hearing official finds that the limitation or termination is warranted unless the institution demonstrates that all the conditions in § 668.175(f) have been met; and

(*2*) Upon proof of the conditions in § 668.174(b)(1), the hearing official finds that the limitation or termination is warranted unless the institution demonstrates that all applicable conditions described in § 668.174(b)(2) or § 668.175(g) have been met.

* * * * *

■ 8. Section 668.93 is amended by redesignating paragraphs (h) and (i) as paragraphs (i) and (j), respectively, and adding a new paragraph (h), to read as follows:

§ 668.93 Limitation.

* * * * *

(h) A change in the participation status of the institution from fully certified to participate to provisionally certified to participate under § 668.13(c).

* * * * *

■ 9. Section 668.171 is revised to read as follows:

§ 668.171 General.

(a) *Purpose.* To begin and to continue to participate in any title IV, HEA program, an institution must demonstrate to the Secretary that it is financially responsible under the standards established in this subpart. As provided under section 498(c)(1) of the HEA, the Secretary determines whether an institution is financially responsible based on the institution's ability to—

(1) Provide the services described in its official publications and statements;

(2) Meet all of its financial obligations; and

(3) Provide the administrative resources necessary to comply with title IV, HEA program requirements.

(b) *General standards of financial responsibility.* Except as provided under paragraphs (c) and (d) of this section, the Secretary considers an institution to be financially responsible if the Secretary determines that—

(1) The institution's Equity, Primary Reserve, and Net Income ratios yield a composite score of at least 1.5, as provided under § 668.172 and appendices A and B to this subpart;

(2) The institution has sufficient cash reserves to make required returns of unearned title IV, HEA program funds, as provided under § 668.173;

(3) The institution is able to meet all of its financial obligations and otherwise provide the administrative resources necessary to comply with title IV, HEA program requirements; and

(4) The institution or persons affiliated with the institution are not subject to a condition of past performance under § 668.174(a) or (b).

(c) *Actions and triggering events.* An institution is not able to meet its financial or administrative obligations under paragraph (b)(3) of this section if it is subject to one or more of the following actions or triggering events.

(1) *Lawsuits and other actions.* (i)(A) Currently or at any time during the three most recently completed award years, the institution is or was required to pay a debt or incurs a liability arising from an audit, investigation, or similar action initiated by a State, Federal, or other oversight entity, or settles or resolves a suit brought against it by that entity, that is based on claims related to the making of a Federal loan or the provision of educational services, for an amount that, for one or more of those years, exceeds the lesser of the threshold amount for which an audit is required under 2 CFR part 200 or 10 percent of its current assets; or

(B) The institution is currently being sued by a State, Federal, or other oversight entity based on claims related to the making of a Federal loan or the provision of educational services for an amount that exceeds the lesser of the threshold amount for which an audit is required under 2 CFR part 200 or 10 percent of its current assets;

(ii) The institution is currently being sued by one or more State, Federal, or other oversight entities based on claims of any kind that are not described in paragraph (c)(1)(i)(B) of this section, and the potential monetary sanctions or damages from that suit or suits are in an amount that exceeds 10 percent of its current assets;

(iii) The institution is currently being sued in a lawsuit filed under the False Claims Act, 31 U.S.C. 3729 *et seq.*, or by one or more private parties for claims that relate to the making of loans to students for the purpose of enrollment or the institution's provision of educational services, if that suit—

(A) Has survived a motion for summary judgment by the institution and has not been dismissed; and

(B) Seeks relief in an amount that exceeds 10 percent of the institution's current assets; or

(iv) For a suit described in paragraph (c)(1)(ii) or (iii) of this section, during a fiscal year for which the institution has not submitted its audited financial statements to the Secretary, the institution entered into a settlement, had judgment entered against it, incurred a liability, or otherwise resolved that suit for an amount that exceeds 10 percent of its current assets.

(v) In determining whether a suit or action under this paragraph exceeds the audit or percentage thresholds, the institution must—

(A) Except for private party suits under paragraph (c)(1)(iii) of this section, for a suit or action that does not demand a specific amount as relief, calculate that amount by totaling the tuition and fees the institution received from every student who was enrolled at the institution during the period for which the relief is sought, or if no period is stated, the three award years preceding the date the suit or action was filed or initiated; and

(B) Use the amount of current assets reported in its most recent audited financial statements submitted to the Secretary.

(2) *Repayments to the Secretary.* During the current award year or any of the three most recently completed award years, the institution is or was required to repay the Secretary for losses from borrower defense claims in an amount that, for one or more of those years, exceeds the lesser of the threshold amount for which an audit is required under 2 CFR part 200 or 10 percent of its current assets, as reported in its most recent audited financial statements submitted to the Secretary.

(3) *Accrediting agency actions.* Currently or any time during the three most recently completed award years, the institution is or was—

(i) Required by its accrediting agency to submit a teach-out plan, for a reason described in § 602.24(c)(1), that covers the institution or any of its branches or additional locations; or

(ii) Placed on probation or issued a show-cause order, or placed on an accreditation status that poses an equivalent or greater risk to its accreditation, by its accrediting agency for failing to meet one or more of the agency's standards, and the accrediting agency does not notify the Secretary within six months of taking that action that it has withdrawn that action because the institution has come into compliance with the agency's standards.

(4) *Loan agreements and obligations.* As disclosed in a note to its audited financial statements or audit opinion, or reported by the institution under paragraph (d) of this section—

(i) The institution violated a provision or requirement in a loan agreement with the creditor with the largest secured extension of credit to the institution;

(ii) The institution failed to make a payment for more than 120 days in accordance with its debt obligations owed to the creditor with the largest secured extension of credit to the institution; or

(iii) As provided under the terms of a security or loan agreement between the institution and the creditor with the largest secured extension of credit to the institution, a monetary or nonmonetary default or delinquency event occurs, or other events occur that trigger, or enable the creditor to require or impose on the institution, an increase in collateral, a change in contractual obligations, an increase in interest rates or payments, or other sanctions, penalties, or fees.

(5) *Non-title IV revenue.* For its most recently completed fiscal year, a proprietary institution did not derive at least 10 percent of its revenue from sources other than title IV, HEA program funds, as provided under § 668.28(c).

(6) *Publicly traded institutions.* As reported by the institution under paragraph (d) of this section, or identified by the Secretary—

(i) The Securities and Exchange Commission (SEC) warns the institution that it may suspend trading on the institution's stock, or the institution's stock is delisted involuntarily from the exchange on which the stock was traded;

(ii) The institution disclosed or was required to disclose in a report filed with the SEC a judicial or administrative proceeding stemming from a complaint filed by a person or entity that is not part of a State or Federal action under paragraph (c)(1) of this section;

(iii) The institution failed to file timely a required annual or quarterly report with the SEC; or

(iv) The exchange on which the institution's stock is traded notifies the institution that it is not in compliance with exchange requirements.

(7) *Gainful employment.* As determined annually by the Secretary, the number of students who receive title IV, HEA program funds enrolled in gainful employment programs that are failing or in the zone under the D/E rates measure in § 668.403(c) is more than 50 percent of the total number of students who received title IV program funds who are enrolled in all the gainful employment programs at the institution. An institution is exempt from this provision if less than 50 percent of all the students enrolled at the institution who receive title IV, HEA program funds are enrolled in gainful employment programs.

(8) *Withdrawal of owner's equity.* For an institution whose composite score is less than 1.5, any withdrawal of owner's equity from the institution by any means, including by declaring a dividend.

(9) *Cohort default rates.* The institution's two most recent official cohort default rates are 30 percent or greater, as determined under subpart N of this part, unless—

(i) The institution files a challenge, request for adjustment, or appeal under that subpart with respect to its rates for one or both of those fiscal years; and

(ii) That challenge, request, or appeal remains pending, results in reducing below 30 percent the official cohort default rate for either or both years, or precludes the rates from either or both years from resulting in a loss of eligibility or provisional certification.

(10) *Other events or conditions.* The Secretary determines that there is an event or condition that is reasonably likely to have a material adverse effect on the financial condition, business, or results of operations of the institution, including but not limited to whether—

(i) There is a significant fluctuation between consecutive award years, or a period of award years, in the amount of Direct Loan or Pell Grant funds, or a combination of those funds, received by the institution that cannot be accounted for by changes in those programs;

(ii) The institution is cited by a State licensing or authorizing agency for failing State or agency requirements;

(iii) The institution fails a financial stress test developed or adopted by the Secretary to evaluate whether the institution has sufficient capital to absorb losses that may be incurred as a result of adverse conditions and continue to meet its financial obligations to the Secretary and students;

(iv) The institution or its corporate parent has a non-investment grade bond or credit rating;

(v) As calculated by the Secretary, the institution has high annual dropout rates; or

(vii) Any adverse event reported by the institution on a Form 8–K filed with the SEC.

(d) *Reporting requirements.* In accordance with procedures established by the Secretary, an institution must notify the Secretary of any action or event identified in paragraph (c) of this section no later than 10 days after that action or event occurs. The Secretary may take an administrative action under paragraph (g) of this section against the institution if it fails to provide timely notice under this paragraph. In its notice to the Secretary, the institution may demonstrate that—

(1) The reported disclosure of a judicial or administrative proceeding under paragraph (c)(6)(ii) of this section does not constitute a material event;

(2) The reported withdrawal of owner's equity under paragraph (c)(8) of this section was used exclusively to meet tax liabilities of the institution or its owners for income derived from the institution, or, in the case where the composite score is calculated based on the consolidated financial statements of a group of institutions, the amount withdrawn from one institution in the group was transferred to another entity within that group; or

(3) The reported violation of a provision or requirement in a loan agreement under paragraph (c)(4) of this section was waived by the creditor. However, if the creditor imposes additional constraints or requirements as a condition of waiving the violation, or imposes penalties or requirements under paragraph (c)(4)(iii) of this section, the institution must identify and describe those penalties, constraints, or requirements and demonstrate that complying with those actions will not adversely affect the institution's ability to meet its current and future financial obligations.

(e) *Public institutions.* (1) The Secretary considers a domestic public institution to be financially responsible if the institution—

(i)(A) Notifies the Secretary that it is designated as a public institution by the State, local, or municipal government entity, tribal authority, or other government entity that has the legal authority to make that designation; and

(B) Provides a letter from an official of that State or other government entity confirming that the institution is a public institution; and

(ii) Is not subject to a condition of past performance under § 668.174.

(2) The Secretary considers a foreign public institution to be financially responsible if the institution—

(i)(A) Notifies the Secretary that it is designated as a public institution by the country or other government entity that has the legal authority to make that designation; and

(B) Provides documentation from an official of that country or other government entity confirming that the institution is a public institution and is backed by the full faith and credit of the country or other government entity; and

(ii) Is not subject to a condition of past performance under § 668.174.

(f) *Audit opinions.* Even if an institution satisfies all of the general standards of financial responsibility under paragraph (b) of this section, the Secretary does not consider the institution to be financially responsible if, in the institution's audited financial statements, the opinion expressed by the auditor was an adverse, qualified, or disclaimed opinion, or the auditor expressed doubt about the continued existence of the institution as a going concern, unless the Secretary determines that a qualified or disclaimed opinion does not significantly bear on the institution's financial condition.

(g) *Administrative actions.* If the Secretary determines that an institution is not financially responsible under the standards and provisions of this section or under an alternative standard in § 668.175, or the institution does not submit its financial and compliance audits by the date and in the manner required under § 668.23, the Secretary may—

(1) Initiate an action under subpart G of this part to fine the institution, or limit, suspend, or terminate the institution's participation in the title IV, HEA programs; or

(2) For an institution that is provisionally certified, take an action against the institution under the procedures established in § 668.13(d).

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

■ 10. Section 668.175 is amended by:
■ A. Revising paragraphs (d) and (f).
■ B. Removing and reserving paragraph (e).
■ C. Adding paragraph (h).
■ D. Revising the authority citation.

The revisions and addition read as follows:

§ 668.175 Alternative standards and requirements.

* * * * *

(d) *Zone alternative.* (1) A participating institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5 may participate in the title IV, HEA programs as a financially responsible institution for no more than three consecutive years, beginning with the year in which the Secretary determines that the institution qualifies under this alternative.

(i)(A) An institution qualifies initially under this alternative if, based on the institution's audited financial statement for its most recently completed fiscal year, the Secretary determines that its composite score is in the range from 1.0 to 1.4; and

(B) An institution continues to qualify under this alternative if, based on the institution's audited financial statement for each of its subsequent two fiscal years, the Secretary determines that the institution's composite score is in the range from 1.0 to 1.4.

(ii) An institution that qualified under this alternative for three consecutive years, or for one of those years, may not seek to qualify again under this alternative until the year after the institution achieves a composite score of at least 1.5, as determined by the Secretary.

(2) Under the zone alternative, the Secretary—

(i) Requires the institution to make disbursements to eligible students and parents, and to otherwise comply with the provisions, under either the heightened cash monitoring or reimbursement payment method described in § 668.162;

(ii) Requires the institution to provide timely information regarding any of the following oversight and financial events—

(A) Any event that causes the institution, or related entity as defined in Accounting Standards Codification (ASC) 850, to realize any liability that was noted as a contingent liability in the institution's or related entity's most recent audited financial statement; or

(B) Any losses that are unusual in nature or infrequently occur or both, as defined in accordance with Accounting Standards Update (ASU) No. 2015–01 and ASC 225;

(iii) May require the institution to submit its financial statement and compliance audits earlier than the time specified under § 668.23(a)(4); and

(iv) May require the institution to provide information about its current operations and future plans.

(3) Under the zone alternative, the institution must—

(i) For any oversight or financial event described in paragraph (d)(2)(ii) of this section for which the institution is required to provide information, in accordance with procedures established by the Secretary, notify the Secretary no later than 10 days after that event occurs; and

(ii) As part of its compliance audit, require its auditor to express an opinion on the institution's compliance with the requirements under the zone alternative, including the institution's administration of the payment method under which the institution received and disbursed title IV, HEA program funds.

(4) If an institution fails to comply with the requirements under paragraphs (d)(2) or (3) of this section, the Secretary may determine that the institution no longer qualifies under this alternative.

(e) [Reserved]

(f) *Provisional certification alternative.* (1) The Secretary may permit an institution that is not financially responsible to participate in the title IV, HEA programs under a provisional certification for no more than three consecutive years if—

(i) The institution is not financially responsible because it does not satisfy the general standards under § 668.171(b)(1), is subject to an action or triggering event under § 668.171(c), or because of an audit opinion described in § 668.171(f); or

(ii) The institution is not financially responsible because of a condition of past performance, as provided under § 668.174(a), and the institution demonstrates to the Secretary that it has satisfied or resolved that condition.

(2) Under this alternative, the institution must—

(i) Provide to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary, provide cash, or agree to a set-aside under paragraph (h) of this section, for an amount determined by the Secretary under paragraph (f)(4) of this section, except that this requirement does not apply to a public institution; and

(ii) Comply with the provisions under the zone alternative, as provided under paragraph (d)(2) and (3) of this section.

(3) If at the end of the period for which the Secretary provisionally certified the institution, the institution is still not financially responsible, the Secretary may again permit the institution to participate under a provisional certification, but the Secretary—

(i) May require the institution, or one or more persons or entities that exercise substantial control over the institution, as determined under § 668.174(b)(1) and (c), or both, to provide to the Secretary financial protection for an amount determined by the Secretary to be sufficient to satisfy any potential liabilities that may arise from the institution's participation in the title IV, HEA programs; and

(ii) May require one or more of the persons or entities that exercise substantial control over the institution, as determined under § 668.174(b)(1) and (c), to be jointly or severally liable for any liabilities that may arise from the institution's participation in the title IV, HEA programs.

(4) The institution must provide to the Secretary an irrevocable letter of credit for an amount that is—

(i) For a State or Federal action under § 668.171(c)(1)(i)(A) or (B), 10 percent or more, as determined by the Secretary, of the amount of Direct Loan Program funds received by the institution during its most recently completed fiscal year;

(ii) For repayments to the Secretary for losses from borrower defense claims under § 668.171(c)(2), equal to the greatest annual loss incurred by the Secretary during the three most recently completed award years to resolve those claims or the amount of losses incurred by the Secretary during the current award year, whichever is greater, plus a portion of the amount of any outstanding or pending claims based on the ratio of the total value of claims resolved in favor of borrowers during the three most recently completed award years to the total value of claims resolved during the three most recently completed award years; and

(iii) For any other action or triggering event described in § 668.171(c), or if the institution's composite score is less than 1.0 or the institution no longer qualifies under the zone alternative, 10 percent or more, as determined by the Secretary, of the total amount of title IV, HEA program funds received by the institution during its most recently completed fiscal year.

* * * * *

(h) *Set-aside.* If an institution does not provide cash or the letter of credit for the amount required under paragraph (d) or (f) of this section within 30 days of the Secretary's request, the Secretary offsets the amount of title IV, HEA program funds that an institution has earned in a manner that ensures that, by the end of a nine-month period, the total amount offset equals the amount of cash or the letter of credit the institution would otherwise provide. The Secretary maintains the amount of funds offset in a temporary escrow account, uses the funds to satisfy the debt and liabilities owed to the Secretary not otherwise paid directly by the institution, and provides to the institution any funds not used for this purpose during the period for which the cash or letter of credit was required.

(Authority: 20 U.S.C. 1094 and 1099c)

■ 11. Section 668.176 is added to subpart L to read as follows:

§ 668.176 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1094, 1099c)

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 12. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087aa—1087hh, unless otherwise noted.

■ 13. Section 674.33 is amended by:

■ A. In paragraph (g)(3) introductory text, removing the words "may discharge" and adding, in their place, the word "discharges".

■ B. In paragraph (g)(3)(i), removing the word "or".

■ C. In paragraph (g)(3)(ii), removing the period and adding, in its place, the punctuation and word "; or".

■ D. Adding paragraph (g)(3)(iii).

■ E. Redesignating paragraphs (g)(8)(vi), (vii), (viii), and (ix) as paragraphs (g)(8)(vii), (viii), (ix), and (x), respectively.

■ F. Adding a new paragraph (g)(8)(vi).

The additions read as follows:

§ 674.33 Repayment.

* * * * *

(g) * * *

(3) * * *

(iii) Based on information in the Secretary's possession, the borrower did not subsequently re-enroll in any title IV-eligible institution within a period of three years from the date the school closed.

* * * * *

(8) * * *

(vi) Upon resuming collection on any affected loan, the Secretary provides the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

* * * * *

■ 14. Section 674.61 is amended by revising paragraph (a) to read as follows:

§ 674.61 Discharge for death or disability.

(a) *Death.* (1) An institution must discharge the unpaid balance of a borrower's Defense, NDSL, or Federal Perkins loan, including interest, if the borrower dies. The institution must discharge the loan on the basis of—

(i) An original or certified copy of the death certificate;

(ii) An accurate and complete photocopy of the original or certified copy of the death certificate;

(iii) An accurate and complete original or certified copy of the death certificate that is scanned and submitted electronically or sent by facsimile transmission; or

(iv) Verification of the borrower's death through an authoritative Federal or State electronic database approved for use by the Secretary.

(2) Under exceptional circumstances and on a case-by-case basis, the chief financial officer of the institution may approve a discharge based upon other reliable documentation of the borrower's death.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 15. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071–1087–4, unless otherwise noted.

§ 682.202 [Amended]

■ 16. Section 682.202 is amended in paragraph (b)(1) by removing the words "A lender" and adding, in their place, "Except as provided in § 682.405(b)(4), a lender".

■ 17. Section 682.211 is amended by adding paragraph (i)(7) to read as follows:

§ 682.211 Forbearance.

* * * * *

(i) * * *

(7) The lender must grant a mandatory administrative forbearance to a borrower upon being notified by the Secretary that the borrower has made a borrower defense claim related to a loan that the borrower intends to consolidate into the Direct Loan Program for the purpose of seeking relief in accordance with § 685.212(k). The mandatory administrative forbearance shall remain in effect until the lender is notified by the Secretary that the Secretary has made a determination as to the borrower's eligibility for a borrower defense discharge.

* * * * *

■ 18. Section 682.402 is amended by:

■ A. Revising paragraphs (b)(2), (d)(6)(ii)(F) introductory text and (d)(6)(ii)(H).

■ B. Redesignating paragraph (d)(6)(ii)(I) as paragraph (d)(6)(ii)(J).

■ C. Adding new paragraphs (d)(6)(ii)(I) and (d)(6)(ii)(K).

■ D. In paragraph (d)(8) introductory text, removing the words "may be" and adding in their place the word "is".

■ E. In paragraph (d)(8)(i), removing the word "or".

■ F. In paragraph (d)(8)(ii), removing the period and adding in its place the punctuation and word "; or".

■ G. Adding paragraph (d)(8)(iii).

■ H. In paragraph (e)(6)(iii), removing the last sentence.

The revisions and additions read as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(b) * * *

(2)(i) A discharge of a loan based on the death of the borrower (or student in the case of a PLUS loan) must be based on—

(A) An original or certified copy of the death certificate;

(B) An accurate and complete photocopy of the original or certified copy of the death certificate;

(C) An accurate and complete original or certified copy of the death certificate that is scanned and submitted electronically or sent by facsimile transmission; or

(D) Verification of the borrower's or student's death through an authoritative Federal or State electronic database approved for use by the Secretary.

(ii) Under exceptional circumstances and on a case-by-case basis, the chief executive officer of the guaranty agency may approve a discharge based upon other reliable documentation of the borrower's or student's death.

* * * * *

(d) * * *

(6) * * *

(ii) * * *

(F) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(ii)(C) or (D) of this section does not qualify for a discharge, the agency shall notify the borrower in writing of that determination, the opportunity for review by the Secretary, and an explanation of the manner in which to request such a review within 30 days after the date the agency—

* * * * *

(H) If a borrower described in paragraph (d)(6)(ii)(E) or (F) fails to submit the completed application within 60 days of being notified of that option, the lender or guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(I) Upon resuming collection on any affected loan, the lender or guaranty agency provides the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

* * * * *

(K)(*1*) Within 30 days after receiving the borrower's request for review under paragraph (d)(6)(ii)(F) of this section, the agency shall forward the borrower's discharge request and all relevant documentation to the Secretary for review.

(*2*) The Secretary notifies the agency and the borrower of the determination upon review. If the Secretary determines that the borrower is not eligible for a discharge under paragraph (d) of this section, within 30 days after being so informed, the agency shall take the actions described in paragraph (d)(6)(ii)(H) or (d)(6)(ii)(I) of this section, as applicable.

(*3*) If the Secretary determines that the borrower meets the requirements for a discharge under paragraph (d) of this section, the agency shall, within 30 days after being so informed, take actions required under paragraph (d)(6) and (d)(7) of this section, as applicable.

* * * * *

(8) * * *

(iii) The Secretary or guaranty agency determines, based on information in their possession, that the borrower did not subsequently re-enroll in any title IV-eligible institution within a period of three years after the school closed.

* * * * *

■ 19. Section 682.405 is amended by:

■ A. Redesignating paragraph (b)(4) as paragraph (b)(4)(i).

■ B. Adding a new paragraph (b)(4)(ii).

The addition reads as follows:

§ 682.405 Loan rehabilitation agreement.

* * * * *

(b) * * *

(4) * * *

(ii) The lender must not consider the purchase of a rehabilitated loan as entry into repayment or resumption of repayment for the purposes of interest capitalization under § 682.202(b).

* * * * *

§ 682.410 [Amended]

■ 20. Section 682.410 is amended in paragraph (b)(4) by adding, after the words "to the lender", the words and punctuation ", but shall not capitalize any unpaid interest thereafter".

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 21. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087a, *et seq.*, unless otherwise noted.

■ 22. Section 685.200 is amended by:

■ A. Adding paragraph (f)(3)(v).

■ B. Adding paragraph (f)(4)(iii).

The additions read as follows:

§ 685.200 Borrower eligibility.

* * * * *

(f) * * *

(3) * * *

(v) A borrower who receives a closed school, false certification, unpaid refund, or defense to repayment discharge that results in a remaining eligibility period greater than zero is no longer responsible for the interest that accrues on a Direct Subsidized Loan or on the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan unless the borrower once again becomes responsible for the interest that accrues on a previously received Direct Subsidized Loan or on the portion of a Direct Consolidation Loan that repaid a Direct Subsidized Loan, for the life of the loan, as described in paragraph (f)(3)(i) of this section.

(4) * * *

(iii) For a first-time borrower who receives a closed school, false certification, unpaid refund, or defense to repayment discharge on a Direct Subsidized Loan or a portion of a Direct Consolidation Loan that is attributable to a Direct Subsidized Loan, the Subsidized Usage Period is reduced. If the Direct Subsidized Loan or a portion of a Direct Consolidation Loan that is attributable to a Direct Subsidized Loan is discharged in full, the Subsidized Usage Period is zero years. If the Direct Subsidized Loan or a portion of a Direct Consolidation Loan that is attributable to a Direct Subsidized Loan is discharged in part, the Subsidized Usage Period may be reduced if the discharge results in the inapplicability of paragraph (f)(4)(i) of this section.

* * * * *

■ 23. Section 685.205 is amended by revising paragraph (b)(6) to read as follows:

§ 685.205 Forbearance.

* * * * *

(b) * * *

(6) Periods necessary for the Secretary to determine the borrower's eligibility for discharge—

(i) Under § 685.206(c);

(ii) Under § 685.214;

(iii) Under § 685.215;

(iv) Under § 685.216;

(v) Under § 685.217;

(vi) Under § 685.222; or

(vii) Due to the borrower's or endorser's (if applicable) bankruptcy;

* * * * *

■ 24. Section 685.206 is amended by revising paragraph (c) to read as follows:

§ 685.206 Borrower responsibilities and defenses.

* * * * *

(c) *Borrower defenses.* (1) For loans first disbursed prior to July 1, 2017, the borrower may assert a borrower defense under this paragraph (c). A "borrower defense" refers to any act or omission of the school attended by the student that relates to the making of the loan or the provision of educational services for which the loan was provided that would give rise to a cause of action against the school under applicable State law, and includes one or both of the following:

(i) A defense to repayment of amounts owed to the Secretary on a Direct Loan, in whole or in part.

(ii) A claim to recover amounts previously collected by the Secretary on the Direct Loan, in whole or in part.

(2) The order of objections for defaulted Direct Loans are as described in § 685.222(a)(1) to (6). A borrower defense claim under this section must be asserted, and will be resolved, under the procedures in § 685.222(e) to (k).

(3) For an approved borrower defense under this section, the Secretary may initiate an appropriate proceeding to collect from the school whose act or omission resulted in the borrower defense the amount of relief arising from the borrower defense.

* * * * *

§ 685.209 [Amended]

■ 25. Section 685.209 is amended by:

■ A. In paragraph (a)(1)(ii), adding the punctuation and words ", for purposes of determining whether a borrower has a partial financial hardship in accordance with paragraph (a)(1)(v) of this section or adjusting a borrower's monthly payment amount in accordance with paragraph (a)(2)(ii) of this section," immediately after the words "Eligible loan".

■ B. In paragraph (c)(1)(ii), adding the punctuation and words ", for purposes of adjusting a borrower's monthly payment amount in accordance with paragraph (c)(2)(ii) of this section," immediately after the words "Eligible loan".

■ C. In paragraph (c)(2)(ii)(B) introductory text, removing the word "Both" and adding, in its place, the words "Except in the case of a married borrower filing separately whose spouse's income is excluded in accordance with paragraph (c)(1)(i)(A) or (B) of this section, both".

■ D. In paragraph (c)(2)(v), removing the words "or the Secretary determines the borrower does not have a partial financial hardship".

■ E. In paragraph (c)(4)(iii)(B), removing the citations "(c)(2)(iv), (c)(4)(v), and (c)(4)(vi)" and adding, in their place, the citations "(c)(2)(iv) and (c)(4)(v)".

■ 26. Section 685.212 is amended by:

■ A. Revising paragraphs (a)(1) and (a)(2).

■ B. Adding paragraph (k).

The revision and addition read as follows:

§ 685.212 Discharge of a loan obligation.

(a) *Death.* (1) If a borrower (or a student on whose behalf a parent borrowed a Direct PLUS Loan) dies, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan based on—

(i) An original or certified copy of the death certificate;

(ii) An accurate and complete photocopy of the original or certified copy of the death certificate;

(iii) An accurate and complete original or certified copy of the death certificate that is scanned and submitted electronically or sent by facsimile transmission; or

(iv) Verification of the borrower's or student's death through an authoritative Federal or State electronic database approved for use by the Secretary.

(2) Under exceptional circumstances and on a case-by-case basis, the Secretary discharges a loan based upon other reliable documentation of the borrower's or student's death that is acceptable to the Secretary.

* * * * *

(k) *Borrower defenses.* (1) If a borrower defense is approved under § 685.206(c) or § 685.222—

(i) The Secretary discharges the obligation of the borrower in whole or in part in accordance with the procedures in §§ 685.206(c) and 685.222, respectively; and

(ii) The Secretary returns to the borrower payments made by the borrower or otherwise recovered on the loan that exceed the amount owed on that portion of the loan not discharged, if the borrower asserted the claim not later than—

(A) For a claim subject to § 685.206(c), the limitation period under applicable law to the claim on which relief was granted; or

(B) For a claim subject to § 685.222, the limitation period in § 685.222(b), (c), or (d), as applicable.

(2) In the case of a Direct Consolidation Loan, a borrower may assert a borrower defense under § 685.206(c) or § 685.222 with respect to a Direct Loan, a FFEL Program Loan, a Federal Perkins Loan, Health Professions Student Loan, Loan for Disadvantaged Students under subpart II of part A of title VII of the Public

Health Service Act, Health Education Assistance Loan, or Nursing Loan made under subpart II of part B of the Public Health Service Act that was repaid by the Direct Consolidation Loan.

(i) The Secretary considers a borrower defense claim asserted on a Direct Consolidation Loan by determining—

(A) Whether the act or omission of the school with regard to the loan described in paragraph (k)(2) of this section other than a Direct Subsidized, Unsubsidized, or PLUS Loan, constitutes a borrower defense under § 685.206(c), for a Direct Consolidation Loan made before July 1, 2017, or under § 685.222, for a Direct Consolidation Loan made on or after July 1, 2017; or

(B) Whether the act or omission of the school with regard to a Direct Subsidized, Unsubsidized, or PLUS Loan made on after July 1, 2017 that was paid off by the Direct Consolidation Loan, constitutes a borrower defense under § 685.222.

(ii) If the borrower defense is approved, the Secretary discharges the appropriate portion of the Direct Consolidation Loan.

(iii) The Secretary returns to the borrower payments made by the borrower or otherwise recovered on the Direct Consolidation Loan that exceed the amount owed on that portion of the Direct Consolidation Loan not discharged, if the borrower asserted the claim not later than—

(A) For a claim asserted under § 685.206(c), the limitation period under applicable law to the claim on which relief was granted; or

(B) For a claim asserted under § 685.222, the limitation period in § 685.222(b), (c), or (d), as applicable.

(iv) The Secretary returns to the borrower a payment made by the borrower or otherwise recovered on the loan described in paragraph (k)(2) of this section only if—

(A) The payment was made directly to the Secretary on the loan; and

(B) The borrower proves that the loan to which the payment was credited was not legally enforceable under applicable law in the amount for which that payment was applied.

* * * * *

■ 27. Section 685.214 is amended by:
■ A. Revising paragraph (c)(2).
■ B. Revising paragraph (f)(4).
■ C. Redesignating paragraphs (f)(5) and (6) as paragraphs (f)(6) and (7), respectively.
■ D. Adding a new paragraph (f)(5).

The revisions and addition read as follows:

§ 685.214 Closed school discharge.

* * * * *

(c) * * *

(2) The Secretary discharges a loan under this section without an application from the borrower if the Secretary determines, based on information in the Secretary's possession, that—

(i) The borrower qualifies for the discharge; and

(ii) The borrower did not subsequently re-enroll in any title IV-eligible institution within a period of three years from the date the school closed.

* * * * *

(f) * * *

(4) If a borrower fails to submit the application described in paragraph (c) of this section within 60 days of the Secretary's providing the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(5) Upon resuming collection on any affected loan, the Secretary provides the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

* * * * *

■ 28. Section 685.215 is amended by:
■ A. Revising paragraph (a)(1).
■ B. Revising paragraph (c) introductory text.
■ C. Revising paragraph (c)(1).
■ D. Redesignating paragraphs (c)(2) through (7) as paragraphs (c)(3) through (8), respectively.
■ E. Adding a new paragraph (c)(2).
■ F. Revising redesignated paragraph (c)(8).
■ G. Revising paragraph (d).

The revisions and addition read as follows:

§ 685.215 Discharge for false certification of student eligibility or unauthorized payment.

(a) *Basis for discharge*—(1) *False certification.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if a school falsely certifies the eligibility of the borrower (or the student on whose behalf a parent borrowed) to receive the proceeds of a Direct Loan. The Secretary considers a student's eligibility to borrow to have been falsely certified by the school if the school—

(i) Certified the eligibility of a student who

(A) Reported not having a high school diploma or its equivalent; and

(B) Did not satisfy the alternative to graduation from high school requirements under section 484(d) of the Act that were in effect at the time of certification;

(ii) Certified the eligibility of a student who is not a high school graduate based on—

(A) A high school graduation status falsified by the school; or

(B) A high school diploma falsified by the school or a third party to which the school referred the borrower;

(iii) Signed the borrower's name on the loan application or promissory note without the borrower's authorization;

(iv) Certified the eligibility of a student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, would not meet State requirements for employment (in the student's State of residence when the loan was originated) in the occupation for which the training program supported by the loan was intended; or

(v) Certified the eligibility of a student for a Direct Loan as a result of the crime of identity theft committed against the individual, as that crime is defined in paragraph (c)(5)(ii) of this section.

* * * * *

(c) *Borrower qualification for discharge.* To qualify for discharge under this section, the borrower must submit to the Secretary an application for discharge on a form approved by the Secretary. The application need not be notarized but must be made by the borrower under penalty of perjury; and in the application, the borrower's responses must demonstrate to the satisfaction of the Secretary that the requirements in paragraph (c)(1) through (7) of this section have been met. If the Secretary determines the application does not meet the requirements, the Secretary notifies the applicant and explains why the application does not meet the requirements.

(1) *High school diploma or equivalent.* In the case of a borrower requesting a discharge based on not having had a high school diploma and not having met the alternative to graduation from high school eligibility requirements under section 484(d) of the Act applicable at the time the loan was originated, and the school or a third party to which the school referred the borrower falsified the student's high school diploma, the borrower must state in the application that that the borrower (or the student on whose behalf a parent received a PLUS loan)—

(i) Did not have a valid high school diploma at the time the loan was certified; and

(ii) Did not satisfy the alternative to graduation from high school statutory or regulatory eligibility requirements identified on the application form and applicable at the time the institution certified the loan.

(2) *Disqualifying condition.* In the case of a borrower requesting a discharge based on a condition that would disqualify the borrower from employment in the occupation that the training program for which the borrower received the loan was intended, the borrower must state in the application that the borrower (or student for whom a parent received a PLUS loan) did not meet State requirements for employment (in the student's State of residence) in the occupation that the training program for which the borrower received the loan was intended because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary.

* * * * *

(8) *Discharge without an application.* The Secretary discharges all or part of a loan as appropriate under this section without an application from the borrower if the Secretary determines, based on information in the Secretary's possession, that the borrower qualifies for a discharge. Such information includes, but is not limited to, evidence that the school has falsified the Satisfactory Academic Progress of its students, as described in § 668.34.

(d) *Discharge procedures.* (1) If the Secretary determines that a borrower's Direct Loan may be eligible for a discharge under this section, the Secretary provides the borrower an application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If the borrower fails to submit the application described in paragraph (c) of this section within 60 days of the Secretary's providing the application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended. The Secretary may capitalize any interest accrued and not paid during that period.

(3) If the borrower submits the application described in paragraph (c) of this section, the Secretary determines whether the available evidence supports the claim for discharge. Available evidence includes evidence provided by the borrower and any other relevant information from the Secretary's records and gathered by the Secretary from other sources, including guaranty agencies, State authorities, test publishers, independent test administrators, school records, and cognizant accrediting associations. The Secretary issues a decision that explains the reasons for any adverse determination on the application, describes the evidence on which the decision was made, and provides the borrower, upon request, copies of the evidence, and considers any response from the borrower and any additional information from the borrower, and notifies the borrower whether the determination is changed.

(4) If the Secretary determines that the borrower meets the applicable requirements for a discharge under paragraph (c) of this section, the Secretary notifies the borrower in writing of that determination.

(5) If the Secretary determines that the borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of that determination and the reasons for the determination.

* * * * *

§ 685.220 [Amended]

■ 29. Section 685.220 is amended by:

■ A. Removing the words "subpart II of part B" from paragraph (b)(21) and adding, in their place, the words "part E".

■ B. Removing paragraph (d)(1)(i).

■ C. Redesignating paragraph (d)(1)(ii) as (d)(1)(i), and paragraph (d)(1)(iii) as (d)(1)(ii).

■ 30. Section 685.222 is added to subpart B to read as follows:

§ 685.222 Borrower defenses.

(a) *General.* (1) For loans first disbursed prior to July 1, 2017, a borrower asserts and the Secretary considers a borrower defense in accordance with the provisions of § 685.206(c), unless otherwise noted in § 685.206(c).

(2) For loans first disbursed on or after July 1, 2017, a borrower asserts and the Secretary considers a borrower defense in accordance with this section. To establish a borrower defense under this section, a preponderance of the evidence must show that the borrower has a borrower defense that meets the requirements of this section.

(3) A violation by the school of an eligibility or compliance requirement in the Act or its implementing regulations is not a basis for a borrower defense under either this section or § 685.206(c) unless the violation would otherwise constitute a basis for a borrower defense under this section.

(4) For the purposes of this section or § 685.206(c), "borrower" means—

(i) The borrower; and

(ii) In the case of a Direct PLUS Loan, the student and any endorsers.

(5) For the purposes of this section or § 685.206(c), a "borrower defense" refers to an act or omission of the school attended by the student that relates to the making of a Direct Loan for enrollment at the school or the provision of educational services for which the loan was provided and that meets the requirements under paragraphs (b), (c), or (d), and includes one or both of the following:

(i) A defense to repayment of amounts owed to the Secretary on a Direct Loan, in whole or in part; and

(ii) A right to recover amounts previously collected by the Secretary on the Direct Loan, in whole or in part.

(6) If the borrower asserts both a borrower defense and any other objection to an action of the Secretary with regard to that Direct Loan, the Secretary notifies the borrower of the order in which the Secretary considers the borrower defense and any other objections. The order in which the Secretary will consider objections, including a borrower defense, will be determined by the Secretary as appropriate under the circumstances.

(b) *Judgment against the school.* (1) The borrower has a borrower defense if the borrower, whether as an individual or as a member of a class, or a governmental agency, has obtained against the school a nondefault, favorable contested judgment based on State or Federal law in a court or administrative tribunal of competent jurisdiction.

(2) A borrower may assert a borrower defense under this paragraph at any time.

(c) *Breach of contract by the school.* The borrower has a borrower defense if the school the borrower received a Direct Loan to attend failed to perform its obligations under the terms of a contract with the student. A borrower may assert a defense to repayment of amounts owed to the Secretary under this paragraph at any time after the breach by the school of its contract with the student. A borrower may assert a right to recover amounts previously collected by the Secretary under this paragraph not later than six years after the breach by the school of its contract with the student.

(d) *Substantial misrepresentation by the school.* (1) A borrower has a borrower defense if the school or any of its representatives, or any institution, organization, or person with whom the school has an agreement to provide educational programs, or to provide marketing, advertising, recruiting, or admissions services, made a substantial misrepresentation in accordance with 34 CFR part 668, subpart F, that the borrower reasonably relied on when the borrower decided to attend, or to continue attending, the school. A borrower may assert, at any time, a defense to repayment under this paragraph (d) of amounts owed to the Secretary. A borrower may assert a claim under this paragraph (d) to recover funds previously collected by the Secretary not later than six years after the borrower discovers, or reasonably could have discovered, the information constituting the substantial misrepresentation.

(2) For the purposes of this section, a designated Department official pursuant to paragraph (e) of this section or a hearing official pursuant to paragraphs (f), (g), or (h) may consider, as evidence supporting the reasonableness of a borrower's reliance on a misrepresentation, whether the school or any of the other parties described in paragraph (d)(1) engaged in conduct such as, but not limited to:

(i) Demanding that the borrower make enrollment or loan-related decisions immediately;

(ii) Placing an unreasonable emphasis on unfavorable consequences of delay;

(iii) Discouraging the borrower from consulting an adviser, a family member, or other resource;

(iv) Failing to respond to the borrower's requests for more information, including about the cost of the program and the nature of any financial aid; or

(v) Otherwise unreasonably pressuring the borrower or taking advantage of the borrower's distress or lack of knowledge or sophistication.

(e) *Procedure for an individual borrower.* (1) To assert a borrower defense under this section, an individual borrower must—

(i) Submit an application to the Secretary, on a form approved by the Secretary—

(A) Certifying that the borrower received the proceeds of a loan, in whole or in part, to attend a named school;

(B) Providing evidence that supports the borrower defense; and

(C) Indicating whether the borrower has made a claim with respect to the information underlying the borrower defense with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower or credited to the borrower's loan obligation; and

(ii) Provide any other information or supporting documentation reasonably requested by the Secretary.

(2) Upon receipt of a borrower's application, the Secretary—

(i) If the borrower is not in default on the loan for which a borrower defense has been asserted, grants forbearance and—

(A) Notifies the borrower of the option to decline the forbearance and to continue making payments on the loan; and

(B) Provides the borrower with information about the availability of the income-contingent repayment plans under § 685.209 and the income-based repayment plan under § 685.221; or

(ii) If the borrower is in default on the loan for which a borrower defense has been asserted—

(A) Suspends collection activity on the loan until the Secretary issues a decision on the borrower's claim;

(B) Notifies the borrower of the suspension of collection activity and explains that collection activity will resume if the Secretary determines that the borrower does not qualify for a full discharge; and

(C) Notifies the borrower of the option to continue making payments under a rehabilitation agreement or other repayment agreement on the defaulted loan.

(3) The Secretary designates a Department official to review the borrower's application to determine whether the application states a basis for a borrower defense, and resolves the claim through a fact-finding process conducted by the Department official.

(i) As part of the fact-finding process, the Department official notifies the school of the borrower defense and considers any evidence or argument presented by the borrower and also any additional information, including—

(A) Department records;

(B) Any response or submissions from the school; and

(C) Any additional information or argument that may be obtained by the Department official.

(ii) The Department official identifies to the borrower and may identify to the school the records he or she considers relevant to the borrower defense. The Secretary provides to the borrower or the school any of the identified records upon reasonable request.

(4) At the conclusion of the fact-finding process, the Department official issues a written decision as follows:

(i) If the Department official approves the borrower defense in full or in part, the Department official notifies the borrower in writing of that determination and of the relief provided as described in paragraph (i) of this section.

(ii) If the Department official denies the borrower defense in full or in part, the Department official notifies the borrower of the reasons for the denial, the evidence that was relied upon, any portion of the loan that is due and payable to the Secretary, and whether the Secretary will reimburse any amounts previously collected, and informs the borrower that if any balance remains on the loan, the loan will return to its status prior to the borrower's submission of the application. The Department official also informs the borrower of the opportunity to request reconsideration of the claim based on new evidence pursuant to paragraph (e)(5)(i) of this section.

(5) The decision of the Department official is final as to the merits of the claim and any relief that may be granted on the claim. Notwithstanding the foregoing—

(i) If the borrower defense is denied in full or in part, the borrower may request that the Secretary reconsider the borrower defense upon the identification of new evidence in support of the borrower's claim. "New evidence" is relevant evidence that the borrower did not previously provide and that was not identified in the final decision as evidence that was relied upon for the final decision; and

(ii) The Secretary may reopen a borrower defense application at any time to consider evidence that was not considered in making the previous decision.

(6) The Secretary may consolidate applications filed under this paragraph (e) that have common facts and claims, and resolve the borrowers' borrower defense claims as provided in paragraphs (f), (g), and (h) of this section.

(7) The Secretary may initiate a separate proceeding to collect from the school the amount of relief resulting from a borrower defense under this paragraph.

(f) *Group process for borrower defense, generally.* (1) Upon consideration of factors including, but not limited to, common facts and claims, fiscal impact, and the promotion of compliance by the school or other title IV, HEA program participants, the Secretary may initiate a process to determine whether a group of borrowers, identified by the Secretary, has a borrower defense.

(i) The members of the group may be identified by the Secretary from individually filed applications pursuant to paragraph (e)(6) of this section or from any other source.

(ii) If the Secretary determines that there are common facts and claims that apply to borrowers who have not filed an application under paragraph (e) of this section, the Secretary may identify such borrowers as members of a group.

(2) Upon the identification of a group of borrowers under paragraph (f)(1) of this section, the Secretary—

(i) Designates a Department official to present the group's claim in the fact-finding process described in paragraph (g) or (h) of this section, as applicable;

(ii) Provides each identified member of the group with notice that allows the borrower to opt out of the proceeding; and

(iii) Notifies the school, as practicable, of the basis of the group's borrower defense, the initiation of the fact-finding process described in paragraph (g) or (h) of this section, and of any procedure by which to request records and respond.

(3) For a group of borrowers identified by the Secretary, for which the Secretary determines that there may be a borrower defense under paragraph (d) based upon a substantial misrepresentation that has been widely disseminated, there is a rebuttable presumption that each member reasonably relied on the misrepresentation.

(g) *Procedures for group process for borrower defenses with respect to loans made to attend a closed school.* For groups identified by the Secretary under paragraph (f) of this section, for which the borrower defense is asserted with respect to a Direct Loan to attend a school that has closed and has provided no financial protection currently available to the Secretary from which to recover any losses arising from borrower defenses, and for which there is no appropriate entity from which the Secretary can otherwise practicably recover such losses—

(1) A hearing official resolves the borrower defense through a fact-finding process. As part of the fact-finding process, the hearing official considers any evidence and argument presented by the Department official on behalf of the group and, as necessary to determine any claims at issue, on behalf of individual members of the group. The hearing official also considers any additional information the Department official considers necessary, including any Department records or response from the school or a person affiliated with the school as described in § 668.174(b), if practicable. The hearing official issues a written decision as follows:

(i) If the hearing official approves the borrower defense in full or in part, the written decision notifies the members of the group in writing of that determination and of the relief provided on the basis of that claim as determined under paragraph (i) of this section.

(ii) If the hearing official denies the borrower defense in full or in part, the written decision states the reasons for the denial, the evidence that was relied upon, the portion of the loans that are due and payable to the Secretary, and whether reimbursement of amounts previously collected is granted, and informs the borrowers that if any balance remains on the loan, the loan will return to its status prior to the group claim process.

(iii) The Secretary provides copies of the written decision to the members of the group and, as practicable, to the school.

(2) The decision of the hearing official is final as to the merits of the group borrower defense and any relief that may be granted on the group claim.

(3) After a final decision has been issued, if relief for the group has been denied in full or in part pursuant to paragraph (g)(1)(ii) of this section, an individual borrower may file a claim for relief pursuant to paragraph (e)(5)(i) of this section.

(4) The Secretary may reopen a borrower defense application at any time to consider evidence that was not considered in making the previous decision.

(h) *Procedures for group process for borrower defenses with respect to loans made to attend an open school.* For groups identified by the Secretary under paragraph (f) of this section, for which the borrower defense is asserted with respect to Direct Loans to attend an open school or a school that is not otherwise covered by paragraph (g) of this section, the claim is resolved in accordance with the procedures in this paragraph (h).

(1) A hearing official resolves the borrower defense and determines any liability of the school through a fact-finding process. As part of the process, the hearing official considers any evidence and argument presented by the school and the Department official on behalf of the group and, as necessary to determine any claims at issue, on behalf of individual members of the group. The hearing official issues a written decision as follows:

(i) If the hearing official approves the borrower defense in full or in part, the written decision establishes the basis for the determination, notifies the members of the group of the relief as described in paragraph (i) of this section, and notifies the school of any liability to the Secretary for the amounts discharged and reimbursed.

(ii) If the hearing official denies the borrower defense for the group in full or in part, the written decision states the reasons for the denial, the evidence that was relied upon, the portion of the loans that are due and payable to the Secretary, and whether reimbursement of amounts previously collected is granted, and informs the borrowers that their loans will return to their statuses prior to the group borrower defense process. The decision notifies the school of any liability to the Secretary for any amounts discharged or reimbursed.

(iii) The Secretary provides copies of the written decision to the members of the group, the Department official, and the school.

(2) The decision of the hearing official becomes final as to the merits of the group borrower defense and any relief that may be granted on the group borrower defense within 30 days after the decision is issued and received by the Department official and the school unless, within that 30-day period, the school or the Department official appeals the decision to the Secretary. In the case of an appeal—

(i) The decision of the hearing official does not take effect pending the appeal; and

(ii) The Secretary renders a final decision.

(3) After a final decision has been issued, if relief for the group has been denied in full or in part pursuant to paragraph (h)(1)(ii) of this section, an individual borrower may file a claim for relief pursuant to paragraph (e)(5)(i) of this section.

(4) The Secretary may reopen a borrower defense application at any time to consider evidence that was not considered in making the previous decision.

(5) The Secretary collects from the school any liability to the Secretary for any amounts discharged or reimbursed to borrowers under this paragraph (h).

(i) *Relief.* If a borrower defense is approved under the procedures in paragraphs (e), (g), or (h) of this section—

(1) The Department official or the hearing official, as applicable, determines the appropriate method for calculating, and the amount of, relief arising out of the facts underlying an individual or group borrower defense, based on information then available to the official or which the official may request; and determines the amount of relief to award the borrower, which may be a discharge of all amounts owed to the Secretary on the loan at issue and may include the recovery of amounts previously collected by the Secretary on the loan, or some lesser amount. In

determining the appropriate method for calculating relief, the Department official or the hearing official, as applicable—

(i) Will consider the availability of information required for a method of calculation;

(ii) When calculating relief for a group of borrowers, may consider information derived from a sample of borrowers from the group; and

(iii) May use one or more of the methods described in Appendix A to this subpart, or such other method determined by the official;

(2) In the written decision described in paragraphs (e), (g), and (h) of this section, the designated Department official or hearing official, as applicable, notifies the borrower of the relief provided and—

(i) Specifies the relief determination;

(ii) Advises that there may be tax implications; and

(iii) Provides the borrower an opportunity to opt out of group relief, if applicable;

(3) Consistent with the determination of relief under paragraph (i)(1) of this section, the Secretary discharges the borrower's obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay and, if applicable, reimburses the borrower for amounts paid toward the loan voluntarily or through enforced collection;

(4) The Secretary or the hearing official, as applicable, affords the borrower such further relief as the Secretary or the hearing official determines is appropriate under the circumstances. Such further relief includes, but is not limited to, one or both of the following:

(i) Determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act.

(ii) Updating reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan; and

(5) The total amount of relief granted with respect to a borrower defense cannot exceed the amount of the loan and any associated costs and fees and will be reduced by the amount of any refund, reimbursement, indemnification, restitution, compensatory damages, settlement, debt forgiveness, discharge, cancellation, compromise, or any other benefit received by, or on behalf of, the borrower that was related to the borrower defense. The relief to the borrower may not include non-pecuniary damages such as inconvenience, aggravation, emotional distress, or punitive damages.

(j) *Cooperation by the borrower.* To obtain relief under this section, a borrower must reasonably cooperate with the Secretary in any proceeding under paragraph (e), (g), or (h) of this section. The Secretary may revoke any relief granted to a borrower who fails to satisfy his or her obligations under this paragraph (j).

(k) *Transfer to the Secretary of the borrower's right of recovery against third parties.* (1) Upon the granting of any relief under this section, the borrower is deemed to have assigned to, and relinquished in favor of, the Secretary any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the contract for educational services for which the loan was received, against the school, its principals, its affiliates, and their successors, its sureties, and any private fund. If the borrower asserts a claim to, and recovers from, a public fund, the Secretary may reinstate the borrower's obligation to repay on the loan an amount based on the amount recovered from the public fund, if the Secretary determines that the borrower's recovery from the public fund was based on the same borrower defense and for the same loan for which the discharge was granted under this section.

(2) The provisions of this paragraph (k) apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(3) Nothing in this paragraph (k) limits or forecloses the borrower's right to pursue legal and equitable relief against a party described in this paragraph (k) for recovery of any portion of a claim exceeding that assigned to the Secretary or any other claims arising from matters unrelated to the claim on which the loan is discharged.

■ 31. Section 685.223 is added to subpart B to read as follows:

§ 685.223 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1087a *et seq.*)

■ 32. Appendix A to subpart B of part 685 is added to read as follows:

Appendix A to Subpart B of Part 685—Calculating Borrower Relief

The Department official or the hearing official, as applicable, determines the amount of relief to award the borrower, which may be a discharge of all amounts owed to the Secretary on the loan at issue and may include the recovery of amounts previously collected by the Secretary on the loan, or some lesser amount. A borrower's relief may be calculated using one or more of the following methods or such other method as the Secretary may determine.

(A) The difference between what the borrower paid, and what a reasonable borrower would have paid had the school made an accurate representation as to the issue that was the subject of the substantial misrepresentation underlying the borrower defense claim.

(B) The difference between the amount of financial charges the borrower could have reasonably believed the school was charging, and the actual amount of financial charges made by the school, for claims regarding the cost of a borrower's program of study.

(C) The total amount of the borrower's economic loss, less the value of the benefit, if any, of the education obtained by the student. Economic loss, for the purposes of this section, may be no greater than the cost of attendance. The value of the benefit of the education may include transferable credits obtained and used by the borrower; and for gainful employment programs, qualifying placement in an occupation within the Standard Occupational Classification (SOC) code for which the training was provided, provided the borrower's earnings meet the expected salary for the program's designated occupations or field, as determined using an earnings benchmark for that occupation. The Department official or hearing official will consider any evidence indicating that no identifiable benefit of the education was received by the student.

■ 33. Section 685.300 is amended by:

■ A. Redesignating paragraph (b)(11) as paragraph (b)(12).

■ B. Adding a new paragraph (b)(11).

■ C. Adding new paragraphs (d) through (i).

The additions read as follows:

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

* * * * *

(b) * * *

(11) Comply with the provisions of paragraphs (d) through (i) regarding student claims and disputes.

* * * * *

(d) *Borrower defense claims in an internal dispute process.* The school will not compel any student to pursue a complaint based on a borrower defense claim through an internal institutional process before the student presents the complaint to an accrediting agency or government agency authorized to hear the complaint.

(e) *Class action bans.* (1) The school shall not seek to rely in any way on a pre-dispute arbitration agreement, nor on any other pre-dispute agreement, with a student, with respect to any aspect of a class action that is related to a borrower defense claim including to seek a stay or dismissal of particular claims or the entire action, unless and until the presiding court has ruled that the case may not proceed as a class action and, if that ruling may be subject to appellate review on an interlocutory basis, the time to seek such review has elapsed or the review has been resolved.

(2) Reliance on a pre-dispute arbitration agreement, or on any other pre-dispute agreement, with a student, with respect to any aspect of a class action includes, but is not limited to, any of the following:

(i) Seeking dismissal, deferral, or stay of any aspect of a class action;

(ii) Seeking to exclude a person or persons from a class in a class action;

(iii) Objecting to or seeking a protective order intended to avoid responding to discovery in a class action;

(iv) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action;

(v) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action after the trial court has denied a motion to certify the class but before an appellate court has ruled on an interlocutory appeal of that motion, if the time to seek such an appeal has not elapsed or the appeal has not been resolved; and

(vi) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action after the trial court in that class action has granted a motion to dismiss the claim and, in doing so, the court noted that the consumer has leave to refile the claim on a class basis, if the time to refile the claim has not elapsed.

(3) *Required provisions and notices.* (i) The school must include the following provision in any agreements with a student recipient of a Direct Loan for attendance at the school, or, with respect to a Parent PLUS Loan, a student for whom the PLUS loan was obtained, that include any agreement regarding pre-dispute arbitration or any other pre-dispute agreement addressing class actions and that are entered into after effective date of this regulation:

> "We agree that neither we nor anyone else will use this agreement to stop you from being part of a class action lawsuit in court. You may file a class action lawsuit in court or you may be a member of a class action lawsuit even if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Direct Loan or the provision by us of educational services for which the Direct Loan was obtained."

(ii) When a pre-dispute arbitration agreement or any other pre-dispute agreement addressing class actions has been entered into before the effective date of this regulation that did not contain a provision described in paragraph (e)(3)(i) of this section, the school must either ensure the agreement is amended to contain the provision specified in paragraph (e)(3)(iii)(A) of this section or provide the student to whom the agreement applies with the written notice specified in paragraph (e)(3)(iii)(B) of this section.

(iii) The school must ensure the agreement described in paragraph (e)(3)(ii) of this section is amended to contain the provision specified in paragraph (e)(3)(iii)(A) or must provide the notice specified in paragraph (e)(3)(iii)(B) to students no later than the exit counseling required under § 685.304(b), or the date on which the school files its initial response to a demand for arbitration or service of a complaint from a student who has not already been sent a notice or amendment.

(A) *Agreement provision.*

> "We agree that neither we nor anyone else who later becomes a party to this agreement will use it to stop you from being part of a class action lawsuit in court. You may file a class action lawsuit in court or you may be a member of a class action lawsuit even if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Direct Loan or the provision by us of educational services for which the Direct Loan was obtained."

(B) *Notice provision.*

> "We agree not to use any pre-dispute agreement to stop you from being part of a class action lawsuit in court. You may file a class action lawsuit in court or you may be a member of a class action lawsuit even if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Direct Loan or the provision by us of educational services for which the Direct Loan was obtained."

(f) *Pre-dispute arbitration agreements.* (1) The school will not compel a student to enter into a pre-dispute agreement to arbitrate a borrower defense claim, or rely in any way on a mandatory pre-dispute arbitration agreement with respect to any aspect of a borrower defense claim.

(2) Reliance on a mandatory pre-dispute arbitration agreement with respect to any aspect of a borrower defense claim includes, but is not limited to, any of the following:

(i) Seeking dismissal, deferral, or stay of any aspect of a judicial action filed by the student;

(ii) Objecting to or seeking a protective order intended to avoid responding to discovery in a judicial action filed by the student; and

(iii) Filing a claim in arbitration against a student who has filed a suit on the same claim.

(3) *Required provisions and notices.* (i) The school must include the following provision in any mandatory pre-dispute arbitration agreements with a student recipient of a Direct Loan for attendance at the school, or, with respect to a Parent PLUS Loan, a student for whom the PLUS loan was obtained, that include any agreement regarding arbitration and that are entered into after effective date of this regulation:

> "We agree that neither we nor anyone else will use this agreement to stop you from bringing a lawsuit regarding our acts or omissions regarding the making of the Direct Loan or the provision by us of educational services for which the Direct Loan was obtained. You may file a lawsuit for such a claim or you may be a member of a class action lawsuit for such a claim even if you do not file it. This provision does not apply to lawsuits concerning other claims."

(ii) When a mandatory pre-dispute arbitration agreement has been entered into before the effective date of this regulation that did not contain a provision described in paragraph (f)(3)(i), the school shall either ensure the agreement is amended to contain the provision specified in paragraph (f)(3)(iii)(A) of this section or provide the student to whom the agreement applies with the written notice specified in paragraph (f)(3)(iii)(B) of this section.

(iii) The school shall ensure the agreement described in paragraph (f)(3)(ii) of this section is amended to contain the provision specified in paragraph (f)(3)(iii)(A) or shall provide the notice specified in paragraph (f)(3)(iii)(B) to students no later than the exit counseling required under § 685.304(b), or the date on which the school files its initial response to a demand for arbitration or service of a complaint from a student who has not already been sent a notice or amendment.

(A) *Agreement provision.*

> "We agree that neither we nor anyone else who later becomes a party to this pre-dispute arbitration agreement will use it to stop you from bringing a lawsuit regarding our acts or omissions regarding the making of the Direct Loan or the provision by us of educational services for which the Direct Loan was obtained. You may file a lawsuit for such a claim or you may be a member of a class action lawsuit for such a claim even if you

do not file it. This provision does not apply to other claims."

(B) *Notice provision.*

"We agree not to use any pre-dispute arbitration agreement to stop you from bringing a lawsuit regarding our acts or omissions regarding the making of the Direct Loan or the provision by us of educational services for which the Direct Loan was obtained. You may file a lawsuit regarding such a claim or you may be a member of a class action lawsuit regarding such a claim even if you do not file it. This provision does not apply to any other claims."

(g) *Submission of arbitral records.* (1) A school shall submit a copy of the following records to the Secretary, in the form and manner specified by the Secretary, in connection with any claim filed in arbitration by or against the school concerning a borrower defense claim:

(i) The initial claim and any counterclaim;

(ii) The pre-dispute arbitration agreement filed with the arbitrator or arbitration administrator;

(iii) The judgment or award, if any, issued by the arbitrator or arbitration administrator;

(iv) If an arbitrator or arbitration administrator refuses to administer or dismisses a claim due to the school's failure to pay required filing or administrative fees, any communication the school receives from the arbitrator or an arbitration administrator related to such a refusal; and

(v) Any communication the school receives from an arbitrator or an arbitration administrator related to a determination that a pre-dispute arbitration agreement regarding educational services provided by the school does not comply with the administrator's fairness principles, rules, or similar requirements, if such a determination occurs.

(2) *Deadline for submission.* A school shall submit any record required pursuant to paragraph (g)(1) of this section within 60 days of filing by the school of any such record with the arbitrator or arbitration administrator and within 60 days of receipt by the school of any such record filed or sent by someone other than the school, such as the arbitration administrator or the student.

(h) *Submission of judicial records.* (1) A school shall submit a copy of the following records to the Secretary, in the form and manner specified by the Secretary, in connection with any claim filed in a lawsuit by the school against the student, or by any party, including a government agency, against the school concerning a borrower defense claim:

(i) The complaint and any counterclaim;

(ii) Any dispositive motion filed by a party to the suit; and

(iii) The ruling on any dispositive motion and the judgment issued by the court.

(2) *Deadline for submission.* A school shall submit any record required pursuant to paragraph (h)(1) of this section within 30 days of filing or receipt, as applicable, of the complaint, answer, or dispositive motion, and within 30 days of receipt of any ruling on a dispositive motion or a final judgment.

(i) *Definitions.* For the purposes of paragraphs (d) through (h) of this section, the term—

(1) "Borrower defense claim" means a claim that is or could be asserted as a defense to repayment under § 685.206(c) or § 685.222;

(2) "Class action" means a lawsuit in which one or more parties seek class treatment pursuant to Federal Rule of Civil Procedure 23 or any State process analogous to Federal Rule of Civil Procedure 23;

(3) "Dispositive motion" means a motion asking for a court order that entirely disposes of one or more claims in favor of the party who files the motion without need for further court proceedings;

(4) "Pre-dispute arbitration agreement" means an agreement between a school and a student providing for arbitration of any future dispute between the parties; and

(5) "Mandatory pre-dispute arbitration agreement" means a pre-dispute arbitration agreement included in an enrollment agreement or other document that must be executed by the student as a condition for enrollment at the school.

* * * * *

■ 34. Section 685.308 is amended by revising paragraph (a) to read as follows:

§ 685.308 Remedial actions.

(a) The Secretary collects from the school the amount of the losses the Secretary incurs and determines that the institution is liable to repay under §§ 685.206, 685.214, 685.215(a)(1)(i), (ii), or (iii), 685.216, or 685.222 or that were disbursed—

(1) To an individual, because of an act or omission of the school, in amounts that the individual was not eligible to receive; or

(2) Because of the school's violation of a Federal statute or regulation.

* * * * *

■ 35. Section 685.310 is added to subpart C to read as follows:

§ 685.310 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1087a *et seq.*)

PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM

■ 36. The authority citation for part 686 continues to read as follows:

Authority: 20 U.S.C. 1070g, *et seq.*, unless otherwise noted.

■ 37. Section 686.42 is amended by revising paragraph (a) to read as follows:

§ 686.42 Discharge of an agreement to serve.

(a) *Death.* (1) If a grant recipient dies, the Secretary discharges the obligation to complete the agreement to serve based on—

(i) An original or certified copy of the death certificate;

(ii) An accurate and complete photocopy of the original or certified copy of the death certificate;

(iii) An accurate and complete original or certified copy of the death certificate that is scanned and submitted electronically or sent by facsimile transmission; or

(iv) Verification of the grant recipient's death through an authoritative Federal or State electronic database approved for use by the Secretary.

(2) Under exceptional circumstances and on a case-by-case basis, the Secretary discharges the obligation to complete the agreement to serve based on other reliable documentation of the grant recipient's death that is acceptable to the Secretary.

* * * * *

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Part III

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; California; California Mobile Source Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0622; FRL–9947–59–Region 9]

Approval and Promulgation of Implementation Plans; California; California Mobile Source Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the California State Implementation Plan (SIP) consisting of certain state regulations establishing standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines. The EPA is approving the SIP revision because the regulations meet the applicable requirements of the Clean Air Act. Approval of the regulations as part of the California SIP makes them federally enforceable.

DATES: This rule is effective on July 18, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R09–OAR–2015–0622. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Doris Lo, EPA Region IX, (415) 972–3959, *lo.doris@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to the EPA.

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I. Proposed Action

On November 12, 2015 (80 FR 69915) ("proposed rule"), the EPA proposed to approve a SIP revision submitted by the California Air Resources Board (CARB) on August 14, 2015 consisting of certain state regulations establishing standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines (referred to herein as "mobile source regulations") for which the EPA has previously issued waivers or authorizations under section 209(b) and section 209(e)(2), respectively, of the Clean Air Act (Act or CAA).

Our proposed rule provides background information concerning the CAA, national ambient air quality standards (NAAQS), SIPs, and other matters pertinent to this rulemaking. *See* 80 FR at pages 69916–69917. We noted in particular that a basic content requirement for SIPs is that they include enforceable emission limitations and other control measures, means, or techniques as may be necessary or appropriate to meet the applicable requirements of the CAA (*see* section 110(a)(2)(A)). We also noted that the EPA's long-standing practice was to allow California emissions reductions credit for mobile source regulations for which the EPA had issued waivers or authorizations under section 209 but that had not been submitted or approved as part of the SIP. We noted that the EPA's rationale for this long-standing practice was rejected by the Ninth Circuit in *Committee for a Better Arvin* v. *EPA,* 786 F.3d 1169 (9th Cir. 2015) ("*Committee for a Better Arvin*"), and that the decision in *Committee for a Better Arvin* led to the submittal by CARB of the mobile source regulations as a SIP revision on August 14, 2015.

In our proposed rule, we describe CARB's August 14, 2015 SIP revision as consisting of the regulations themselves and documentation of the public process conducted by CARB in approving the regulations as part of the California SIP. Specifically, the proposed rule includes table 1, which presents the contents of the SIP revision by mobile source category and provides, for each category, a listing of the relevant sections of the California Code of Regulations (CCR) that establish standards and other requirements for control of emissions from new on-road and new or in-use off-road vehicles or engines; the corresponding date of CARB's hearing or Executive Officer (EO) action through which the regulations or amendments were adopted; and the notice of decision in which the EPA granted a waiver or authorization for the given set of regulations. For this final rule, we are republishing table 1 from the proposed rule as amended in response to CARB comment #1 (see section II of this document).

TABLE 1—CARB SIP REVISION SUBMITTAL SUMMARY

Source category	Relevant sections of California Code of Regulations	Date of relevant CARB hearing date(s) or Executive Officer action	EPA Notice of decision
On-Road Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles (LEV II).	Amendments to 13 CCR §§ 1961, 1965, and 1978 and the documents incorporated by reference (see table 2 below), effective for state law purposes on 12/04/03; and amendments to 13 CCR §§ 1961, 1976, 1978, and documents incorporated by reference (see table 2 below), effective for state law purposes on 2/17/07.	12/12/02, 6/22/06.	70 FR 22034 (4/28/05); 75 FR 44948 (7/30/10)

TABLE 1—CARB SIP REVISION SUBMITTAL SUMMARY—Continued

Source category	Relevant sections of California Code of Regulations	Date of relevant CARB hearing date(s) or Executive Officer action	EPA Notice of decision
On-Road Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles (LEV III) and Zero Emission Vehicles (ZEV).	Adoption of 13 CCR §§ 1961.2 and 1962.2 (excluding subsection 1962.2(g)(6)) and amendments to 13 CCR §§ 1900, 1956.8, 1960.1, 1961, 1962.1, 1962.2 (re-numbered to 1961.3), 1965, 1976, 1978, 2037, 2038, 2062, 2112, 2139, 2140, 2145, 2147, and 2235 and the documents incorporated by reference (see table 2 below), effective for state law purposes on 08/07/12; amendments to 13 CCR §§ 1900, 1956.8, 1960.1, 1961, 1961.2, 1962.1, 1962.2 (excluding subsection 1962.2(g)(6)(C)), and 1976 and the documents incorporated by reference (see table 2 below), effective for state law purposes on 12/31/12.	01/26/12, 11/15/12.	78 FR 2112 (1/9/13)
On-Road Heavy-Duty Gasoline Engines	13 CCR § 1956.8 and the document incorporated by reference (see table 2 below), effective for state law purposes on 12/4/03.	12/12/02, 9/5/03 (EO).	75 FR 70237 (11/17/10)
On-Road Heavy-Duty Diesel Engines	Amendments to 13 CCR § 1956.8, and the document incorporated by reference (see table 2 below), effective for state law purposes on 11/17/02.	10/25/01	70 FR 50322 (8/26/05)
On-Road Motorcycles	Amendments to 13 CCR §§ 1900, 1958 (excluding 1958(a)(1)), and 1965, and the document incorporated by reference (see table 2 below), effective for state law purposes on 11/22/99.	12/10/98	71 FR 44027 (8/3/06)
On-Road Heavy-Duty Engines—On-Board Diagnostic System (HD OBD).	13 CCR §§ 1971.1 and 1971.5, effective for state law purposes on 6/17/10.	5/28/09	77 FR 73459 (12/10/12)
On-Road Heavy Duty Vehicles—engine or vehicle idle controls.	13 CCR §§ 1956.8, 2404, 2424, 2425, and 2485 (excluding subsections 2485(c)(1)(A), 2485(c)(1)(B), and 2485(c)(3)(B)), and the document incorporated by reference (see table 2 below), effective for state law purposes on 11/15/2006.	10/20/05	77 FR 9239 (2/16/12)
In-Use Diesel-Fueled Transport Refrigeration Units	13 CCR § 2477, as amended, effective for state law purposes on 3/7/11.	11/18/10	78 FR 38970 (6/28/13)
Commercial Harbor Craft	17 CCR § 93118.5 (excluding subsection 93118.5(e)(1)), effective for state law purposes on 11/19/08.	11/15/07, 9/2/08 (EO).	76 FR 77521 (12/13/11)
Off-Road Large Spark-Ignition (LSI) Engines	New LSI engine emissions standards: 13 CCR §§ 2430, 2431, 2433, 2434, and 2438; LSI fleet requirements: 13 CCR §§ 2775, 2775.1 and 2775.2, and the documents incorporated by reference (see table 2 below), effective for state law purposes on 5/12/07.	5/25/06, 3/2/07 (EO).	77 FR 20388 (4/4/12)
Auxiliary Diesel Engines on Ocean-Going Vessels	13 CCR § 2299.3 and 17 CCR § 93118.3, effective for state law purposes on 01/02/09.	12/6/07, 10/16/08 (EO).	76 FR 77515 (12/13/11)
In-Use Off-Road Diesel Fueled Fleets	13 CCR §§ 2449 (excluding subsection 2449(d)(2)) 2449.1, and 2449.2, effective for state law purposes on 12/14/11.	5/25/07, 7/26/07, 12/11/08, 1/22/09, 7/23/09, 12/17/10.	78 FR 58090 (9/20/13)
Mobile Cargo Handling Equipment (CHE)	13 CCR § 2479 (excluding subsections (e)(2) and (e)(4)), effective for state law purposes on 12/31/06; and amendments to 13 CCR § 2479 (excluding subsections (e)(2) and (e)(4)), effective for state law purposes on 10/14/12.	12/8/05, 9/22/11.	77 FR 9916 (2/21/12); 80 FR 26249 (5/7/15)
Small Off-Road Engines (SORE)	13 CCR §§ 2401, 2403, 2404, 2405, 2406, 2408, 2408.1, and 2409, and the document incorporated by reference (see table 2 below), effective for state law purposes on 5/5/10.	11/21/08	80 FR 26041 (5/6/15)
Off-Road Compression—Ignition (CI) Engines	13 CCR §§ 2420, 2421, 2423, 2424, 2425, 2425.1, 2426, and 2427, and the documents incorporated by reference (see table 2 below), effective for state law purposes on 1/6/06.	1/27/00, 12/9/04.	75 FR 8056 (2/23/10)
In-Use Portable Diesel-Fueled Engines (PDE)	17 CCR §§ 93116 through 93116.5 (excluding subsection 93116.3(a)), effective for state law purposes on 3/11/05.	2/26/04	77 FR 72846 (12/6/12)

TABLE 1—CARB SIP REVISION SUBMITTAL SUMMARY—Continued

Source category	Relevant sections of California Code of Regulations	Date of relevant CARB hearing date(s) or Executive Officer action	EPA Notice of decision
Portable Equipment Registration Program (PERP)	13 CCR §§ 2451, 2452, 2453, 2455 (excluding subsections 2455(a) and 2455(b)), 2456 (excluding subsections 2456(a), 2456(d)(3), 2456(d)(5), and 2456(d)(6)), 2458, 2459, 2460, 2461, and 2462, as amended, effective for state law purposes on 9/12/07.	3/27/97, 7/31/07 (EO), 12/10/98, 2/26/04, 6/22/06, 3/22/07.	77 FR 72851 (12/6/12)
Spark-Ignition Marine Engines and Boats (Marine SI) ..	13 CCR §§ 2111, 2112, Appendix A therein, 2139, 2147, 2440, 2442, 2443.1, 2443.2, 2444.1, 2444.2, 2445.1, 2445.2, 2446, 2447 and 2474, and the documents incorporated by reference (see table 2 below), effective for state law purposes on 08/16/09.	7/24/08, 6/5/09 (EO).	80 FR 26032 (5/16/15)
Off-Highway Recreational Vehicles and Engines (OHRV).	13 CCR §§ 2111, 2112, 2411, 2412, and 2413, and the document incorporated by reference (see table 2 below), effective for state law purposes on 8/15/07.	7/20/06	79 FR 6584 (2/4/14)

The regulations submitted by CARB and listed in table 1 incorporate by reference certain documents that establish test procedures and labeling specifications, among other things, and CARB submitted these documents as part of the overall SIP revision. In our proposed rule, we included a table (table 2) that lists the incorporated documents included in the SIP submittal and are republishing that table in this final rule. Our proposed rule also included a third table in which we described the applicability of the regulations listed in table 1 above and summarized some of the key emissions control requirements contained in the rules. In today's action, we are approving the regulations in table 1 and the test procedures and specifications in table 2 as a revision to the California SIP.[1]

TABLE 2—DOCUMENTS INCORPORATED BY REFERENCE IN CARB REGULATIONS LISTED IN TABLE 1, ABOVE, AND SUBMITTED AS PART OF SIP REVISION

On-Road Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles (LEV II):
- California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles, as last amended September 5, 2003.
- California Motor Vehicle Emission Control and Smog Index Label Specifications for 1978 through 2003 Model Year Motorcycles, Light-, Medium- and Heavy-Duty Engines and Vehicles, as last amended September 5, 2003.
- California Smog Index Label Specifications for 2004 and Subsequent Model Passenger Cars and Light-Duty Trucks, adopted September 5, 2003.
- California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended September 5, 2003.
- California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as amended June 22, 2006.
- California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended June 22, 2006.
- California Exhaust Emission Standards Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended June 22, 2006.

On-Road Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles (LEV III) and Zero Emission Vehicles (ZEV):
- California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles, as last amended March 22, 2012.
- California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines, as last amended March 22, 2012.
- California Non-Methane Organic Gas Test Procedures, as last amended March 22, 2012.
- California 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended March 22, 2012, excluding GHG-related provisions.
- California Environmental Performance Label Specifications for 2009 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles, as last amended March 22, 2012.
- California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended March 22, 2012.
- California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended March 22, 2012.
- Specifications for Fill Pipes and Openings of 1977 through 2014 Model Motor Vehicle Fuel Tanks, as last amended March 22, 2012.
- Specifications for Fill Pipes and Openings of 2015 and Subsequent Model Motor Vehicle Fuel Tanks, adopted March 22, 2012.

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[1] There is one exception to the EPA's approval of the regulations and test procedures listed in tables 1 and 2. The exception is 13 CCR section 2449.2(f)(4), a provision for which the EPA is deferring final action at this time.

TABLE 2—DOCUMENTS INCORPORATED BY REFERENCE IN CARB REGULATIONS LISTED IN TABLE 1, ABOVE, AND SUBMITTED AS PART OF SIP REVISION—Continued

- California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, adopted March 22, 2012, excluding GHG-related provisions.
- California Exhaust Emission Standards and Test Procedures for 2009 through 2017 Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, as last amended March 22, 2012, excluding GHG-related provisions.
- California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, adopted March 22, 2012, excluding GHG-related provisions.
- California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended December 6, 2012, excluding GHG-related provisions.
- California 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 Model Greenhouse Gas Exhaust Emission standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended December 6, 2012, excluding GHG-related provisions.
- California Non-Methane Organic Gas Test Procedures, as last amended December 6, 2012.
- California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended December 6, 2012.
- California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines, as last amended December 6, 2012.
- California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles, as last amended December 6, 2012.
- California Exhaust Emission Standards and Test Procedures for 2009 through 2017 Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, as last amended December 6, 2012.
- California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, adopted December 6, 2012, excluding GHG-related provision.

On-Road Heavy-Duty Gasoline Engines:

- California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-cycle Engines, as last amended December 12, 2002.

On-Road Heavy-Duty Diesel Engines:

- California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles, as last amended October 25, 2001.

On-Road Motorcycles:

- California Motor Vehicle Emission Control and Smog Index Label Specifications, as last amended October 22, 1999.

On-Road Heavy Duty Vehicles—Reduced Idling:

- California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines, as last amended September 1, 2006.

Off-Road Large Spark-Ignition (LSI) Engines:

- California Exhaust Emission Standards and Test Procedures for New 2001 through 2006 Off-Road Large Spark-Ignition Engines, Parts I and II, adopted September 1, 1999 and as last amended March 2, 2007.
- California Exhaust and Evaporative Emission Standards and Test Procedures for 2007 through 2009 Off-Road Large Spark-Ignition Engines, (2007–2009 Test Procedure 1048), adopted March 2, 2007.
- California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines, (2010 and Later Test Procedure 1048), adopted March 2, 2007.
- California Exhaust and Evaporative Emission Standards and Test Procedures for New 2007 and Later Off-Road Large Spark-Ignition Engines (Test Procedures 1065 and 1068), adopted March 2, 2007.

Small Off-Road Engines (SORE):

- California Exhaust Emission Standards and Test Procedures for 2005 and Later Small Off-Road Engines, as last amended February 24, 2010.

Off-Road Compression-Ignition (CI) Engines:

- California Exhaust Emission Standards and Test Procedures for New 2000 and Later Tier 1, Tier 2, and Tier 3 Off-Road Compression-Ignition Engines, Part I–B, adopted January 28, 2000 and as last amended October 20, 2005.
- California Exhaust Emission Standards and Test Procedures for New 1996 and Later Tier 1, Tier 2, and Tier 3 Off-Road Compression-Ignition Engines, Part II, adopted May 12, 1993 and as last amended October 20, 2005.
- California Exhaust Emission Standards and Test Procedures for New 2008 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–C, adopted October 20, 2005.

Spark-Ignition Marine Engines and Boats (Marine SI):

- California Exhaust Emission Standards and Test Procedures for 2001 Model Year and Later Spark-Ignition Marine Engines, as last amended June 5, 2009.
- Procedures for Exemption of Add-On and Modified Parts for Off-Road Categories, as last amended June 5, 2009.

Off-Highway Recreational Vehicles and Engines (OHRV):

- California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles, and Engines, as last amended August 15, 2007.

We noted in our proposed rule that CARB has expressly excluded from the August 14, 2015 SIP submittal certain sections or subsections of California code that have been authorized or waived by the EPA under CAA section 209. The excluded provisions pertain to:

- Greenhouse Gas (GHG) exhaust emission standards 2009 through 2016 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, and 2017 and subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles; and

- GHG related provisions incorporated in the test procedures.

Also, CARB has expressly excluded certain sections or subsections of California code that are not subject to preemption under CAA section 209 and thus not included in the related waiver or authorization by the EPA. These provisions pertain to:

- Fuel use requirements;
- Idling restrictions on drivers;
- Opacity standards;
- Daily mass emission limits (from the PERP regulations); and
- Certain labeling and consumer notification requirements.

On pages 69923–69925 of our proposed rule, we described how we evaluated the regulations and how we determined that the regulations meet all applicable CAA requirements in order to be included in the California SIP. In short, we determined that:

- CARB provided adequate public notice of a comment period and a hearing on the draft SIP revision prior to adoption and submittal to the EPA, and thereby complied with the applicable procedural requirements for SIP revisions under the CAA section 110(l) and 40 CFR 51.102;
- CARB has adequate legal authority to implement the regulations because state law so provides, because the regulations are not preempted under the CAA (pursuant to waivers or authorizations issued for them by the EPA), and because CARB is not otherwise prohibited by any provision of federal or state law from carrying out the regulations;
- The regulations include all of the elements necessary to provide for practical enforceability, including clear applicability and exemption provisions, emissions standards and other requirements, test methods, recordkeeping and reporting provisions, and thereby establish enforceable emissions limitations as required under CAA section 110(a)(2)(A);[2]
- CARB's mobile source regulations submitted for approval as a revision to the California SIP establish emission limitations relied upon by RFP, attainment, and maintenance plans developed by California to meet CAA SIP requirements for nonattainment areas, and thus would not interfere with such CAA requirements for the purposes of CAA section 110(l); and
- Given the longstanding nature of CARB's mobile source program, and its documented effectiveness at achieving significant reductions from mobile sources, the state has adequate personnel and funding to carry out the mobile source regulations submitted for approval as part of the California SIP.

For more background information on the regulatory context for this final rule, and for additional detail on the SIP submittal itself, and our evaluation, please see our proposed rule.

II. Public Comments and EPA Responses

The EPA's proposed rule, published at 80 FR 69915 (November 12, 2015), provided for a 30-day comment period. The EPA received two comment letters in response to the proposed rule: (1) A comment letter dated December 8, 2015 from CARB; and (2) a comment letter dated December 14, 2015 from the Owner-Operator Independent Drivers Association, Inc. (OOIDA). In the paragraphs below, we summarize the comments and provide our responses.

CARB comment #1: CARB indicates that while the August 14, 2015 SIP revision submittal included two regulations affecting Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards (CHE Regulation), table 1 of the EPA's November 12, 2015 proposed rule only lists one such regulation. CARB notes that, while table 1 of the proposed rule only listed one CHE regulation, table 3 of the proposed rule lists both. CARB suggests that table 1 be amended to include both CHE regulations, consistent with CARB's August 14, 2015 SIP revision submittal.

EPA response to CARB comment #1: CARB is correct that the proposed action covers both CHE rules and that the EPA inadvertently failed to include one of the two CHE regulations in table 1 of the proposed rule. Table 1, as amended to list both CHE regulations, is included in the preamble to this final rule.

OOIDA comment #1: OOIDA contends that the EPA's proposed action to approve CARB's mobile source regulations as part of the California SIP is inconsistent with the Ninth Circuit's decision in *Committee for a Better Arvin* by failing to demonstrate how CARB has satisfied the requirement under the CAA that SIPs must include "enforceable emission limitations and other control measures . . . as may be necessary or appropriate to meet the applicable requirements of [the CAA]." Section 110(a)(2)(A). OOIDA asserts that the materials that CARB and the EPA are relying upon were previously submitted as part of CARB's waiver or authorization requests to the EPA, and thus are outdated. OOIDA notes that many of these regulations have been in effect under state law for years, and thus, to comply with *Committee for a Better Arvin*, the EPA must require CARB to submit current evidence showing how well these requirements have been adopted, whether the reductions in pollution have been met, what the experience of the regulated community has been, and whether CARB's cost estimates were accurate.

EPA response to OOIDA comment #1: We disagree that our action to approve California's mobile source regulations that have been waived or authorized by the EPA under CAA section 209 is inconsistent with the Ninth Circuit's decision in *Committee for a Better Arvin* or that the information sought by OOIDA is necessary to establish that the regulations are "necessary or appropriate" for the purposes of CAA section 110(a)(2)(A).

First, in *Committee for a Better Arvin*, the Ninth Circuit remanded to the EPA the Agency's final actions approving two specific regional plans that were adopted to meet nonattainment area SIP requirements and that rely, in part, on emissions reductions from so-called "waiver" measures, *i.e.*, CARB mobile source regulations for which the EPA has issued waivers or authorizations under CAA section 209. In so doing, the court rejected the EPA's arguments supporting the Agency's longstanding practice of allowing California to rely on emissions reductions from state mobile source measures waived or authorized by the EPA under CAA section 209 to meet CAA SIP requirements without requiring approval of those measures into the California SIP. The Ninth Circuit found that CAA section 110(a)(2)(A) plainly mandates that the SIP include all state and local emission limitations, control measures, means, and techniques on which the state relies to assure compliance with the CAA. 786 F.3d 1169, at 1175–1178 (9th Cir. 2015). The Court found support for its view in the Act's provisions that allow the EPA or citizens to commence lawsuits to enforce emissions standards or limitations established under the Act. *Id.*

In response to the decision, CARB selected for the SIP those mobile source regulations that represent the most current set of such regulations that have been waived or authorized by the EPA under CAA section 209 and that are relied upon to provide emissions reductions in the most recently-approved or pending SIPs for the various nonattainment areas in California, such as the two regional plans that were the subject of the remand in *Committee for a Better Arvin.* The issue of whether the emissions reductions anticipated by CARB when adopting the regulations reasonably approximate those that have actually occurred is not relevant for the EPA's action on CARB's mobile source regulations SIP revision. The fact that California is relying on the emissions reductions from the mobile source regulations to meet any CAA requirements makes the regulations "necessary or appropriate" for inclusion in the SIP, regardless of whether the reductions are the same as those originally estimated by CARB at the time of submittal of the waiver or authorization request.

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[2] After proposing action on CARB's mobile source regulations, we discovered a specific provision in the "Surplus Off-Road Opt-In for NO_X (SOON) Program" portion of CARB's Regulation for In-Use Off-Road Diesel-Fueled Fleets that cannot be reconciled with the principle that SIP rules relied upon for emissions reductions must be federally enforceable. The specific provision is 13 CCR section 2449.2(f)(4) ("ARB Authority"), which states, in pertinent part: "ARB has sole authority to enforce the requirements of section 2449.2." We find 13 CCR section 2449.2(f)(4) to be severable from the rest of the regulation and have not included it in today's approval action.

In response to CARB's SIP revision submittal, however, the EPA did not simply propose to approve the mobile source regulations without review and evaluation for compliance with relevant CAA requirements for such regulations. For example, the EPA reviewed the regulations to determine whether SIP procedural requirements under CAA section 110(a)(2) and related EPA regulations were met; to determine whether the regulations are enforceable and thereby comply with the applicable requirement in CAA section 110(a)(2)(A); to determine whether the state has provided necessary assurances that it has adequate personnel, funding, and authority to implement the regulations and thereby comply with the applicable requirements in CAA section 110(a)(2)(E); and to determine whether the SIP revision would interfere with attainment or reasonable further progress or any other CAA requirement as required under CAA section 110(l). *See* our proposed rule, 80 FR at 69923–69925. For the reasons stated in the proposed rule, we concluded that CARB's mobile source regulation SIP revision met all of the relevant CAA requirements and would not interfere with attainment or reasonable further progress or any other CAA requirement.

One consideration that the EPA did *not* take into account was the cost of compliance by manufacturers or owners/operators subject to CARB's mobile source regulations. Such cost issues standing alone, which OOIDA believes CARB must submit and that the EPA must consider, are not relevant to the EPA's review of SIPs and SIP revisions under CAA section 110. This has been settled law since 1976 when the Supreme Court issued its decision in *Union Electric Co.* v. *EPA,* 427 U.S. 246, at 255–266 (1976) ("*Union Electric*"), rehearing denied 429 U.S. 873 (1976). In *Union Electric,* the Supreme Court found that the 1970 version of section 110(a)(2) did not allow the EPA to disapprove an attainment sulfur dioxide (SO_2) SIP on the ground that the SIP's control measures for complying with the SO_2 NAAQS would be so stringent as to be technologically or economically infeasible. *Id.* at 265. The Supreme Court made it clear that Congress left states free to choose technology-forcing measures to achieve attainment within what was then a three-year deadline. *Id.* at 268–269. While the CAA has been amended a number of times since 1970, the basic allocation of responsibilities on the states in developing and submitting SIPs and on the EPA in reviewing SIPs and SIP revisions remains the same today, and thus the holding of *Union Electric* continues to inform the EPA's review of SIPs and SIP revisions today.

OOIDA comment #2: Citing CAA section 307(b)(1), OOIDA asserts that the EPA must specify whether any SIP approval has nationwide scope or effect. OOIDA further declares that if the EPA fails to make such an express determination, then OOIDA will advise its members residing outside of California that they do not need to comply with any of the California laws, statutes or regulations included in the SIP. If, on the other hand, the EPA finds that the SIP does have "nationwide scope and effect," then OOIDA claims that CARB is required under CAA section 110(a)(2)(E) to satisfy the EPA that the imposition of California's regulatory regime on interstate truckers residing outside of California is consistent with the Commerce Clause of the U.S. Constitution. Without such a demonstration from CARB, and a finding of nationwide scope or effect by the EPA, OOIDA objects to the EPA's proposed approval of CARB's mobile source regulations as part of the California SIP.

EPA response to OOIDA comment #2: CAA section 307(b)(1) provides that a petition for review of the EPA in promulgating certain specific types of standards, such as the NAAQS, "or any other nationally applicable regulations promulgated, or final action taken, by the [EPA] under the [CAA] may be filed only in the U.S. Court of Appeals for the District of Columbia." A petition for review of the EPA's action in approving a SIP under CAA section 110 that is locally or regionally applicable may be filed only in the U.S. Court of Appeals for the appropriate circuit unless such SIP action is based on a determination of "nationwide scope or effect" and if in taking such action the EPA finds and publishes that such action is based on such a determination. In that case, CAA section 307(b)(1) provides for review of the EPA's SIP action in the U.S. Court of Appeals for the District of Columbia. Thus, section 307(b)(1) not only confers jurisdiction upon the U.S. Courts of Appeals but also specifies how the venue for petitions for review of actions covered by section 307(b)(1) is determined. *Dalton Trucking Inc.* v. *EPA,* No. 13–1283, slip op. at 7–8 (D.C. Cir. Dec. 18, 2015).

When the EPA issues a final decision waiving or authorizing CARB mobile source regulations under CAA section 209 of the CAA, the proper venue for judicial review of that decision is the U.S. Court of Appeals for the D.C. Circuit if either the decision is "nationally applicable" or the EPA determines the decision is of "nationwide scope or effect" and publishes the determination. Section 307(b)(1). In making a determination of nationwide scope or effect for a waiver or authorization under section 209, the EPA takes into account that other states may adopt California's standards for which a section 209 waiver or authorization has been granted if certain criteria are met. Sections 177 and 209(e)(2)(B) allow other states to adopt (and subsequently enforce in their state) California's regulations for which the EPA has issued waivers or authorizations. The EPA may also consider the applicability of such regulations to manufacturers or owner/operators residing outside of California but selling, leasing, or operating vehicles or equipment in California.[3]

In this case, the EPA is taking action under section 110 of the CAA to approve CARB's mobile source regulations as part of the California SIP. Unlike the Agency's issuance of a waiver or authorization under section 209, approval of CARB's mobile source regulations under section 110 does not enable other states to adopt the regulations. The EPA's approval of the regulations under section 110 *does* extend federal enforceability to the standards. *See* CAA sections 113 (EPA enforcement authority) and 304 (citizen suits). However, that is true of all SIP approval actions under section 110, and thus, like other SIP approval actions, we find that our final action herein is not nationally applicable, nor is it of nationwide scope or effect. Petitions for review of this final action therefore must be filed in the U.S. Court of Appeals for the appropriate circuit, *i.e.,* in this case, the U.S. Court of Appeals for the Ninth Circuit.

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[3] The D.C. Circuit recently concluded that a decision under section 209 is not "nationally applicable" under section 307(b) if it applies only to vehicles owned or operated in California, even if those vehicles are based outside California. *Dalton Trucking Inc.* v. *EPA,* No. 13–1283, slip op. at 10 (D.C. Cir. Dec. 18, 2015). However, a decision that is not applicable outside California can still have effect outside California.

Lastly, because the EPA finds that the Agency's final action herein is not of "nationwide scope or effect," no further response to OOIDA's comment is necessary.

OOIDA comment #3: OOIDA notes that, in addition to being an affirmative grant of congressional authority, the Commerce Clause of the U.S. Constitution, which authorizes Congress "[t]o regulate Commerce . . . among the several states," is in its negative aspect also a limitation on the regulatory authority of the states. OOIDA contends that, in its negative aspect, the Commerce Clause protects the nation against economic Balkanization and state regulations affecting interstate commerce where the burden on commerce is excessive in relation to the putative local benefits. For example, OOIDA cites high aggregate costs purportedly incurred to comply with two specific CARB regulations, the Heavy-Duty (Truck) Greenhouse Gas (HD GHG) Regulations and the In-Use On-Road Heavy-Duty Diesel-Fueled Vehicles Regulation ("Truck and Bus Regulation"). OOIDA argues that the EPA should expressly consider and make findings whether the aggregate impact of regulations which California has sought to "federalize" through SIP approvals violate these Constitutional principles.

EPA response to OOIDA comment #3: First of all, we note that today's action does not include CARB's HD GHG Regulations or the Truck and Bus Regulation. The former was not included in the SIP revision submittal and has never been submitted as part of the California SIP, and the latter was submitted and approved by the EPA as a SIP revision in 2012 at 77 FR 20308 (April 4, 2012).

As to the Commerce Clause comment more generally, the negative aspect of the Commerce Clause to which OOIDA refers is often referred to as the "dormant" Commerce Clause. OOIDA notes some of the basic principles under which courts have found state regulations to be invalid under the dormant Commerce Clause.[4] OOIDA asks the EPA to expressly consider and make findings whether the aggregate impact of regulations that California has sought to "federalize" through SIP approvals violate dormant Commerce Clause principles.

Under the CAA, the EPA's responsibility in reviewing SIPs and SIP revisions is to ensure that all CAA requirements that apply to a given SIP or SIP revision are met, and if a given SIP or SIP revision meets minimum applicable CAA requirements, then the EPA "shall" approve it. *See* CAA section 110(k)(3). Among the CAA requirements that apply to SIPs or SIP revisions is section 110(a)(2)(E), which provides in relevant part that SIPs and SIP revisions must provide necessary assurances that the state will have adequate authority under state law to carry out such SIP and is not prohibited by any provision of federal or state law from carrying out such SIP. In this instance, the EPA has issued waivers or authorization under section 209 for all of the subject regulations (and in doing so has removed the federal Clean Air Act preemption), and the EPA has found CARB to have the necessary legal authority to enforce the standards under state law. Furthermore, none of the subject regulations has been found by any court to be preempted under the dormant Commerce Clause or any other federal law, and thus, CARB is not prohibited from carrying out such SIP.

Moreover, in this instance, the "dormant" Commerce Clause is no obstacle to the EPA's approval of CARB's mobile source regulations SIP revision. As a general matter, the "dormant" Commerce Clause acts to limit certain types of state regulation that affect interstate commerce, but does not limit actions by federal agencies, such as the EPA. Additionally, "dormant" Commerce Clause principles simply do not apply where Congress has so clearly established a process under which the EPA must waive preemption if certain conditions are met. Here, the regulations submitted as part of CARB's SIP revision fall within the scope of CAA section 209, the Congressional provision under which the explicit general preemption of state mobile source regulations may be waived for California. Congress can authorize state or local government action that otherwise would violate the "dormant" Commerce Clause, even if the action ultimately interferes with interstate commerce. *See White* v. *Massachusetts Council of Constr. Employers, Inc.*, 460 U.S. 204, 213 (1983). Both the legislative history of CAA section 209 and the text of the statute itself show that Congress affirmatively contemplated the type of regulations at issue here, even assuming those regulations might otherwise be considered to interfere with interstate commerce. *See Motor & Equip. Mfrs. Ass'n* v. *EPA,* 627 F.2d 1095 (D.C. Cir. 1979) ("*MEMA I*"). The EPA has consistently interpreted these provisions as providing a narrow review of California's decision making. These views are consistent with the views we expressed in more detail in our recent brief in *Owner-Operator Independent Drivers Association, Inc.* v. *EPA,* D.C. Cir., Case No. 14–1192 ("*OOIDA* v. *EPA*"), which has been placed in the docket for this rulemaking. While the specific California regulations at issue in *OOIDA* v. *EPA* are not included in the SIP revision approved in today's action, we believe that the views expressed in our brief in that case on the Commerce Clause apply more generally to EPA actions and to California regulations (including those approved herein) for which the EPA has issued waivers or authorizations and thus we are adopting the reasoning set forth therein in support of today's action.

Lastly, Congress allows for cost considerations in reviewing requests for waivers of preemption under section 209 of the Act. The third prong of EPA's consideration (section 209(b)(1)(C) for on-road waivers and section 209(e)(2)(A)(iii) for off-road authorizations) includes an assessment of whether CARB's regulations are technologically infeasible. Such assessment includes a review of whether those opposing the waiver have demonstrated that there is inadequate lead time to permit the development of technology necessary to meet the regulations at issue, giving appropriate consideration to the cost of compliance within that time frame.[5] Each of the regulations approved in today's actions were the subject of a waiver or authorization by the EPA under section 209, and thus, cost compliance issues have already been considered by the Agency in that context. The EPA does not intend to reopen those issues through today's action under CAA section 110 on CARB's SIP revision.

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[4] OOIDA cites the court's reasoning in *Union Pac. R.R.* v. *Cal. Pub. Utils. Comm'n,* 346 F.3d 851, 871 (9th Cir. 2003) in support of its arguments challenging California's mobile source regulations on the grounds of extra-territorial impact. In *Union Pac. R.R.,* the Ninth Circuit Court of Appeals struck down certain California regulations having an extraterritorial impact; however, in more recent years, the Ninth Circuit appears to have modified its views on the extra-territoriality doctrine. In *Rocky Mountain Farmers Union* v. *Corey,* 730 F.3d 1070, 1101 (9th Cir. 2013), a case challenging California's Low Carbon Fuel Standard, the Ninth Circuit noted: "In the modern era, the Supreme Court has rarely held that statutes violate the extraterritoriality doctrine[.]", and concluded: "The district court held that the Fuel Standard regulated extraterritorial conduct because: (1) . . . it 'attempts to control' out-of-state conduct, . . . We disagree." *Id.* We also note that, while *Rocky Mountain Farmers Union* stands for the proposition that CAA section 211(c)(4)(B) "does not insulate California from scrutiny under the dormant Commerce Clause," *Id.,* at 1107, CAA section 211(c)(4) does not establish for motor vehicle fuels the type of specific process under which California rules *shall* be waived or authorized by the EPA as that found for mobile source emissions standards in CAA sections 209(b) and (e). See additional discussion regarding the dormant Commerce Clause and California regulations waived or authorized under CAA sections 209(b) and (e) later in the response to OOIDA comment #3.

OOIDA Comment #4: OOIDA believes that the costs to comply with CARB's On-Road Heavy-Duty Vehicle—Engine or Vehicle Idle Controls ("Anti-Idling") Regulations disproportionately burden motor carriers and drivers from outside of the State of California because local California truck owners who go home at night on a regular basis are not pressured to purchase an Alternative Power Source (APS) to condition the truck cab for the comfort of the driver for those times when the idling shutdown system activates in uncomfortably hot or cold weather. On the benefit side, OOIDA contends that CARB did not quantify the environmental benefits that will be derived from the Anti-Idling Regulations in either the SIP revision or the waiver request to the EPA for the rules back in 2008. OOIDA believes that the burden of these regulations upon out-of-state trucks far exceeds the air pollution benefits, but in any event, now that the regulations have been in effect for several years, OOIDA states that the EPA should not approve the Anti-Idling Regulations as part of the SIP until CARB presents, and the EPA considers, up-to-date information concerning costs and benefits.

EPA response to OOIDA comment #4: CARB included the Anti-Idling Regulations in the package of mobile source regulations submitted as part of the California SIP because recent and pending regional air quality plans depend upon the emissions reductions from implementation of the regulations. At the time the regulations were adopted, CARB estimated statewide benefits from reducing idling of sleeper berth equipped trucks at 46 tons per day of oxides of nitrogen, 4.2 tons per day of reactive organic gases, and 0.4 tons per day of particulate matter in year 2010.[6]

As noted previously, the CAA requires the EPA to approve SIPs and SIP revisions that meet the applicable requirements of the CAA. One of those requirements involves a determination that the state has provided necessary assurances that the state is not prohibited by any provision of federal or state law from carrying out the SIP (*see* CAA section 110(a)(2)(E)), and in this case, no court has found the Anti-Idling Regulations to be in violation of the Commerce Clause or any other provision of federal law.

Also, as noted above in our responses to OOIDA comment #1, under *Union Electric,* compliance cost issues standing alone are not relevant to the EPA's review of SIPs and SIP revisions under CAA section 110, and as noted in response to OOIDA comment #3, the Commerce Clause acts to limit certain types of state regulation that affect interstate commerce, but does not limit actions by federal agencies, such as the EPA. As also previously explained, the "dormant" Commerce Clause principles do not apply where Congress has established a process under which the EPA must waive preemption if certain conditions are met. The EPA's views expressed herein concerning the reach of the "dormant" Commerce Clause and the viability of challenges under the Commerce Clause to California regulations for which waivers or authorizations have been issued are consistent with our recent brief in *Owner-Operator Independent Drivers Association, Inc.* v. *EPA,* D.C. Cir., Case No. 14–1192, which has been placed in the docket for this rulemaking.

OOIDA comment #5: OOIDA cites CARB's In-Use Diesel-Fueled Transport Refrigeration Units (TRUs) Regulation as another example of what it contends is a state regulation whose costs on interstate commerce far exceed any benefit yet demonstrated by CARB. OOIDA further contends that the EPA does not have the authority to approve a rule with what it views as an unconstitutional impact on interstate commerce.

EPA response to OOIDA comment #5: As previously explained, the Commerce Clause acts to limit certain types of state regulation that affect interstate commerce, but does not limit actions by federal agencies, such as the EPA. As also previously explained, the "dormant" Commerce Clause principles do not apply where Congress has established a process under which the EPA must waive preemption if certain conditions are met. On the other hand, the EPA recognizes that it must review SIPs and SIP revisions for compliance with CAA section 110(a)(2)(E), which provides in relevant part that the state must provide necessary assurances that, among other things, the state is not prohibited by any provision of federal or state law from carrying out the SIP. In this instance, no court has found CARB's TRUs Regulation to be in violation of the Commerce Clause or any other provision of federal law.

As noted above in the EPA response to OOIDA comment #3, the EPA has considered in detail the issue of the relevance of the "dormant" Commerce Clause to CARB's regulations that are subject to waivers or authorizations under section 209 in a recent brief filed in the D.C. Circuit Court of Appeals in *Owner-Operator Independent Drivers Association, Inc.* v. *EPA,* D.C. Cir., Case No. 14–1192, which is in the docket for this rulemaking.

III. Final Action

Under section 110(k)(3) of the CAA, and for the reasons given above, we are taking final action to approve a SIP revision submitted by CARB on August 14, 2015 that includes certain sections of title 13 and title 17 of the California Code of Regulations that establish standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines. Tables 1 and 2 above list the regulations and related test procedures and other specifications we are approving in this action.[7] We are approving the SIP revision because the regulations (and related test procedures and other specifications) included therein fulfill all relevant CAA requirements. This final action incorporates by reference the regulations into the federally enforceable SIP for the State of California.

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[5] *See* 79 FR 46256, 46262–46264. In *MEMA I,* the court addressed the cost of compliance issue in reviewing a waiver decision. According to the court: Section 202's cost of compliance concern, juxtaposed as it is with the requirement that the Administrator provide the requisite lead time to allow technological developments, refers to the economic costs of motor vehicle emission standards and accompanying enforcement procedures. *See* S. Rep. No. 192, 89th Cong., 1st Sess. 5–8 (1965); H.R. Rep. No. 728 90th Cong., 1st Sess. 23 (1967), *reprinted in* U.S. Code Cong. & Admin. News 1967, p. 1938. It relates to the timing of a particular emission control regulation rather than to its social implications. Congress wanted to avoid undue economic disruption in the automotive manufacturing industry and also sought to avoid *doubling or tripling* the cost of motor vehicles to purchasers. It, therefore, requires that the emission control regulations be technologically feasible within economic parameters. Therein lies the intent of the cost of compliance requirement (emphasis added).

[6] CARB's Updated Informative Digest, "Requirements to Reduce Idling Emissions from New and In-Use Trucks, Beginning in 2008," posted September 6, 2006.

[7] As discussed above in footnotes #1 and #2, we are deferring action on 13 CCR section 2449.2(f)(4).

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of certain sections of title 13 and title 17 of the California Code of Regulations described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by the EPA for inclusion in the State implementation plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the **Federal Register** in the next update to the SIP compilation.[8] The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region IX Office (please contact the person identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 15, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 1, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220a is amended as follows:

■ a. In paragraph (c), table 1 is amended:

■ i. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 1 (Motor Vehicle Pollution Control Devices), Article 1 (General Provisions)" after the entry for "6626"; and under it, adding entries for "1900(b)(11) through (b)(17)", "1900(b)(9) and (b)(22)", and "1900(b)(22)";

■ ii. By adding entries for "1956.8(a)(2), (a)(5), (b), and (h)", "1956.8(b), (c)(1)(B), (d), and (h)(2)(footnotes J and K)", and "1956.8(a)(2)(A), (a)(6), and (b)" after the heading "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 1 (Motor Vehicle Pollution Control Devices), Article 2 (Approval of Motor Vehicle Pollution Control Divisions (New Vehicles))";

■ iii. By adding entries for "1956.8(b), (c)(1)(B), (c)(3), (d), (h)(2), and (h)(5)", "1956.8(b), (c)(1)(A)(3), (d), and (h)(5)", and "1958 (a) (excluding (a)(1)), (b)(1), (b)(2), (f), (g), and (h)", after the entry for "1956.8";

■ iv. By adding entries for "1960.1(r)", "1960.1(r)", "1961, including Introduction, (a)(4), (a)(8), (a)(12), (a)(15); (b)(3)(B), (b)(3)(C), (b)(3)(D), (b)(3)(E); (d); and (e)", and "1961(d)" after the entry for "1960.1";

■ v. By adding entries for "1961, including Introduction, (a)(1), (a)(3),

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[8] 62 FR 27968 (May 22, 1997).

(a)(4), (a)(5), (a)(7), (a)(8)(B), (a)(14)(A); (b)(1)(A), (b)(1)(B)(1.)(c.), (b)(1)(B)(3.), (b)(1)(C)(1.), (b)(1)(D), (b)(3)(A), (b)(3)(B), (b)(3)(C), (b)(3)(E); (c)(1), (c)(2)(A), (c)(3)(A), (d)", "1961, including Introduction, (a)(1), (b)(1)(A), (d)", "1961.2", "1961.2, including Introduction, (a)(1), (a)(2)(A), (a)(2)(D), (a)(7)(A), (a)(7)(A)(2.) (through equation 2), (A)(9), (b)(1)(A), (b)(1)(A)(2.), (b)(1)(D), (b)(4)(A), (c)(1)(B), (c)(3)(B), and (d)"; "1962.1", "1962.1 (b)(2)(D)(1) and (2), (c)(3)(A), and (h)(1)"; "1962.2, excluding (g)(6)(C)"; "1962.2(c)(2)(B), (c)(3)(A), (c)(3)(A)(1.), (h)(1)"; "1962.3"; "1965"; "1965"; "1965"; "1971.1"; "1971.5"; "1976(c)"; "1976(b)(1), (c), (f)(3) and (f)(4)"; "1976(b)(1), (b)(1)(G)(3), (c)"; "1978(a)(1), (b)"; "1978(b)"; and "1978" after the entry for "1961";

■ vi. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 1 (Motor Vehicle Pollution Control Devices), Article 6 (Emission Control Warranty System)" after the entry for "2027"; and under it, adding entries for "2037(g)" and "2038(c)(3)";

■ vii. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 2 (Enforcement of Vehicle Emission Standards and Surveillance Testing), Article 1 (Assembly-Line Testing)" after the new entry "2038(c)(3)"; and under it, adding an entry for "2062";

■ viii. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 2 (Enforcement of Vehicle Emission Standards and Surveillance Testing), Article 2.1 (Procedures for In-Use Vehicle Voluntary and Influenced Recalls)" after the new entry "2062"; and under it, adding entries for "2111(a)(1)", "2111(a)(4)", "2112(l)(12)", "2112(l)(20), (l)(23)", and "2112(b), (l)(9), (l)(18)";

■ ix. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 2 (Enforcement of Vehicle Emission Standards and Surveillance Testing), Article 2.3 (In-Use Vehicle Enforcement Test Procedures)" after the new entry "2112(b), (l)(9), (l)(18)"; and under it, adding entries for "2139(h)", "2139(a), (b), (c)(2)", and "2140(b)";

■ x. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 2 (Enforcement of Vehicle Emission Standards and Surveillance Testing), Article 2.4 (Procedures for Reporting Failures of Emission-Related Components)" after the new entry "2140(b)"; and under it, adding entries for "2145(b)(3)", "2147(b)", and "2147(b)(3)";

■ xi. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 4.4 (Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks)" after the new entry "2147(b)(3)"; and under it, adding an entry for "2235";

■ xii. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 5.1 (Standards for Fuels for Nonvehicular Sources)" after the entry for "2297"; and under it, adding an entry for "2299.3";

■ xiii. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 1 (Small Off-Road Engines)" after the new entry "2299.3"; and under it, adding entries for "2401(a)(13), (36), (41), (51), (52)", "2403(b)(2), (b)(3), (b)(4), (d), (e)(1)", "2404(a)"; "2404(m)(1), (m)(2), (m)(3)"; "2405(b)(1), (b)(2), (h)(1), (h)(2)"; "2406(b)(1), (b)(2)"; "2408(b)(2), (d)(4), (f)(1), (f)(3), (f)(4), (f)(5), (g)(1)(E), (i)(3), (i)(7)"; "2408.1"; and "2409(a), (b)(1), (b)(2), (b)(5), (b)(6), (d)(3)";

■ xiv. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 3 (Off-Highway Recreational Vehicles and Engines)" after the new entry "2409(a), (b)(1), (b)(2), (b)(5), (b)(6), (d)(3)"; and under it, adding entries for "2411(a)(1), (a)(13), (a)(17), (a)(18), (a)(19)"; "2412"; and "2413";

■ xv. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 4 (Off-Road Compression-Ignition Engines and Equipment)" after the new entry "2413"; and under it, adding entries for "2420", "2421", "2423", "2424", "2424(a)", "2425", "2425(e)", "2425.1", "2426", and "2427";

■ xvi. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 4.5 (Off-Road Large Spark-Ignition Engines)" after the new entry "2427"; and under it, adding entries for "2430", "2431(a), (a)(19), (a)(28)", "2433", "2434(c)", and "2438(e)(7)";

■ xvii. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 4.7 (Spark-Ignition Marine Engines)" after the new entry "2438(e)(7)"; and under it, adding entries for "2440(a)(3)", "2442(a)(1), (a)(2), (b), (c), (d), (e), (f), (g), (h)", "2443.1(b)(1), (c)(2)(B), (c)(4)(B), (c)(4)(D), (c)(4)(G), (c)(4)(H), (d)(4)(B)", "2443.2(b)(1), (c)(1), (c)(2), (e)", "2444.1(a), (b)(3)(B), (b)(3)(E), (b)(3)(G), (e)(4)(A)(1. through 10.), (e)(4)(B), (e)(4)(C)(1., 2., and 3.)", "2444.2", "2445.1(a), (c)(1), (c)(2), (c)(3), (e)(10), (e)(11), (g)(2)(A)", "2445.2(a)", "2446(a), (b)(4)(B), (c)(1)(A), (c)(1)(B), (c)(2)(A), (c)(3)(D), (c)(3)(E), (d)(3)(D), (d)(5), (e)", and "2447";

■ xviii. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 4.8 (In-Use Off-Road Diesel-Fueled Fleets)" after the new entry "2447"; and under it, adding entries for "2449, excluding (d)(2)", "2449.1", and "2449.2, excluding (f)(4)";

■ xix. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 5 (Portable Engine and Equipment Registration)" after the new entry "2449.2, excluding (f)(4)"; and under it, adding entries for "2451", "2452", "2453", "2455, excluding (a) and (b)", "2456, excluding (a), (d)(3), (d)(5), and (d)(6)", "2458", "2459", "2460", "2461", and "2462";

■ xx. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 7 (Certification Procedures for Aftermarket Parts for Off-Road Vehicles, Engines, Equipment)" after the new entry "2462"; and under it, adding an entry for "2474(e), (i)(1)";

■ xxi. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 8 (Off-Road Airborne Toxic Control Measures)" after the new entry "2474(e), (i)(1)"; and under it, adding entries for "2477", "2479, excluding (e)(2) and (e)(4)", and "2479(a), (b), (c), (d), (e)(1), (e)(3), (e)(5), (f)(1), (f)(2), (f)(3), (f)(6), (h)(1), (i), (j)(1), (j)(2), (j)(3), (k), (l), (m), (n), (o), (p), (q), (r)";

■ xxii. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 10 (Mobile Source Operational Controls), Article 1 (Motor Vehicles)" after the new entry "2479(a), (b), (c), (d), (e)(1), (e)(3), (e)(5), (f)(1), (f)(2), (f)(3), (f)(6), (h)(1), (i), (j)(1), (j)(2), (j)(3), (k), (l), (m), (n), (o), (p), (q), (r)"; and under it, adding an entry for "2485, excluding (c)(1)(A), (c)(1)(B), (c)(3)(B)";

■ xxiii. By adding a table entry titled "Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 15 (Additional Off-Road Vehicles and Engines Pollution Control Requirements), Article 2 (Large Spark Ignition (LSI) Engines Fleet Requirements)" after the entry for "2701"; and under it, adding entries for "2775", "2775.1", and "2775.2";

■ xxiv. By adding entries for "93116", "93116.1", "93116.2", "93116.3, excluding (a)", "93116.4", "93116.5", "93118.3", and "93118.5, excluding (e)(1)" after the entry for "93114"; and

b. Paragraph (c), table 2 is amended by adding entries for "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles, as last amended September 5, 2003", "California Motor Vehicle Emission Control and Smog Index Label Specifications for 1978 through 2003 Model Year Motorcycles, Light-, Medium- and Heavy-Duty Engines and Vehicles," as last amended September 5, 2003", "California Smog Index Label Specifications for 2004 and Subsequent Model Passenger Cars and Light-Duty Trucks," adopted September 5, 2003", "California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended September 5, 2003", "California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as amended June 22, 2006", "California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended June 22, 2006", "California Exhaust Emission Standards Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended June 22, 2006", "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles, as last amended March 22, 2012", "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines, as last amended March 22, 2012", "California Non-Methane Organic Gas Test Procedures, as last amended March 22, 2012", "California 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended March 22, 2012, excluding GHG-related provisions", "California Environmental Performance Label Specifications for 2009 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles, as last amended March 22, 2012", "California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended March 22, 2012", "California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended March 22, 2012", "Specifications for Fill Pipes and Openings of 1977 through 2014 Model Motor Vehicle Fuel Tanks, as last amended March 22, 2012", "Specifications for Fill Pipes and Openings of 2015 and Subsequent Model Motor Vehicle Fuel Tanks, adopted March 22, 2012", "California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, adopted March 22, 2012, excluding GHG-related provisions", "California Exhaust Emission Standards and Test Procedures for 2009 through 2017 Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, as last amended March 22, 2012, excluding GHG-related provisions", "California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, adopted March 22, 2012, excluding GHG-related provisions", "California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended December 6, 2012, excluding GHG-related provisions", "California 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 Model Greenhouse Gas Exhaust Emission standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended December 6, 2012, excluding GHG-related provisions", "California Non-Methane Organic Gas Test Procedures, as last amended December 6, 2012", "California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended December 6, 2012", "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines, as last amended December 6, 2012", "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles, as last amended December 6, 2012", "California Exhaust Emission Standards and Test Procedures for 2009 through 2017 Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, as last amended December 6, 2012", "California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, adopted December 6, 2012, excluding GHG-related provisions", "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-cycle Engines, as last amended December 12, 2002", "California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles, as last amended October 25, 2001", "California Motor Vehicle Emission Control and Smog Index Label Specifications, as last amended October 22, 1999", "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines, as last amended September 1, 2006", "California Exhaust Emission Standards and Test Procedures for New 2001 through 2006 Off-Road Large Spark-Ignition Engines, Parts I and II, adopted September 1, 1999 and as last amended March 2, 2007", "California Exhaust and Evaporative Emission Standards and Test Procedures for 2007 through 2009 Off-Road Large Spark-Ignition Engines, (2007–2009 Test Procedure 1048), adopted March 2, 2007", "California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines, (2010 and Later Test Procedure 1048), adopted March 2, 2007", "California Exhaust and Evaporative Emission Standards and Test Procedures for New 2007 and Later Off-Road Large Spark-Ignition Engines (Test Procedures 1065 and 1068), adopted March 2, 2007", "California Exhaust Emission Standards and Test Procedures for 2005 and Later Small Off-Road Engines, as last amended February 24, 2010", "California Exhaust Emission Standards and Test Procedures for New 2000 and Later Tier 1, Tier 2, and Tier 3 Off-Road Compression-Ignition Engines, Part I–B, adopted January 28, 2000 and as last amended October 20, 2005", "California Exhaust Emission Standards and Test Procedures for New 1996 and Later Tier 1, Tier 2, and Tier 3 Off-Road Compression-Ignition Engines, Part II, adopted May 12, 1993 and as last amended October 20, 2005", "California Exhaust Emission Standards and Test Procedures for New 2008 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–C, adopted October 20, 2005", "California Exhaust Emission Standards and Test Procedures for 2001 Model Year and Later Spark-Ignition Marine Engines, as last amended June 5, 2009", "Procedures for Exemption of Add-On and Modified Parts for Off-Road Categories, as last amended June 5, 2009", and "California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles, and Engines, as last amended August 15, 2007" after the entry for "Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB)".

The additions read as follows:

§ 52.220a Identification of plan—partial.

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(c) * * *

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS[1]

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* * * * * * *				
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 1 (Motor Vehicle Pollution Control Devices), Article 1 (General Provisions)				
1900(b)(11) through (b)(17)	Definitions	11/22/1999	[Insert **Federal Register** citation], 6/16/2016.	Definitions of "motorcycle engine," "passenger car," "recall," "replacement part," "subgroup," and "reactivity adjustment factor."
1900(b)(9) and (b)(22)	Definitions	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Definitions of "intermediate volume manufacturer" and "small volume manufacturer."
1900(b)(22)	Definitions	12/31/2012	[Insert **Federal Register** citation], 6/16/2016.	Definition of "small volume manufacturer."
* * * * * * *				
1956.8(a)(2), (a)(5), (b), and (h)	Exhaust Emissions Standards and Test Procedures—1985 and Subsequent Model Heavy-Duty Engines and Vehicles.	11/17/2002	[Insert **Federal Register** citation], 6/16/2016.	Exhaust emissions standards for new 2004 and subsequent model heavy-duty diesel engines, heavy-duty natural gas-fueled and LPG-fueled engines derived from diesel-cycle engines; crankcase emissions requirements; test procedures.
1956.8(b), (c)(1)(B), (d), and (h)(2) (footnotes J and K).	Exhaust Emissions Standards and Test Procedures—1985 and Subsequent Model Heavy-Duty Engines and Vehicles.	12/4/2003	[Insert **Federal Register** citation], 6/16/2016.	Test procedures; exhaust emissions standards for new 2005 and subsequent model HD OC engines.
1956.8(a)(2)(A), (a)(6), and (b)	Exhaust Emissions Standards and Test Procedures—1985 and Subsequent Model Heavy-Duty Engines and Vehicles.	11/15/2006	[Insert **Federal Register** citation], 6/16/2016.	Heavy-duty diesel engine idling requirements; test procedures.
* * * * * * *				
1956.8(b), (c)(1)(B), (c)(3), (d), (h)(2), and (h)(5).	Exhaust Emissions Standards and Test Procedures—1985 and Subsequent Model Heavy-Duty Engines and Vehicles.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Test procedures; exhaust emissions standard for new 2005 and subsequent model HD OC engines; 1992 and subsequent model diesel engines used in MD low-emissions vehicles.
1956.8(b), (c)(1)(A)(3), (d), and (h)(5)	Exhaust Emissions Standards and Test Procedures—1985 and Subsequent Model Heavy-Duty Engines and Vehicles.	12/31/2012	[Insert **Federal Register** citation], 6/16/2016.	Test procedures; exhaust emissions standard for new 2005 and subsequent model HD OC engines; 1992 and subsequent model diesel engines used in MD low-emissions vehicles.
1958(a) (excluding (a)(1)), (b)(1), (b)(2), (f), (g), and (h).	Exhaust Emissions Standards and Test Procedures—Motorcycles and Motorcycle Engines Manufactured on or after January 1, 1978.	11/22/1999	[Insert **Federal Register** citation], 6/16/2016.	Exhaust emissions standards for HC + NO_X and for CO; different standards established for different sizes and for different models years; provisions for small volume manufacturers and for early-compliance credits; sunset review. Excluded subsection relates to an exclusion for motorcycles or motorcycle engines where the engine displacement is less than 50 cubic centimeters.

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* * * * * * *				
1960.1(r)	Exhaust Emission Standards and Test Procedures—1981 through 2006 Model Passenger Cars, Light Duty Trucks, and Medium Duty Vehicles.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	4,000-mile Supplement FTP Emission Standards for LEV, ULEV, and SULEV in the PC, LDT, and MDVs.
1960.1(r)	Exhaust Emission Standards and Test Procedures—1981 through 2006 Model Passenger Cars, Light Duty Trucks, and Medium Duty Vehicles.	12/31/2012	[Insert **Federal Register** citation], 6/16/2016.	4,000-mile Supplement FTP Emission Standards for LEV, ULEV, and SULEV in the PC, LDT, and MDVs.
1961, including Introduction, (a)(4), (a)(8), (a)(12), (a)(15); (b)(3)(B), (b)(3)(C), (b)(3)(D), (b)(3)(E); (d); and (e).	Exhaust Emission Standards and Test Procedures—2004 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	12/4/2003	[Insert **Federal Register** citation], 6/16/2016.	50 °F Exhaust emissions standards, requirements for vehicles certified to the optional 150,000 mile standards, NMOG credit provisions, fuel-fired heater provisions, phase-in requirements for MDV manufacturers; test procedures.
1961(d)	Exhaust Emission Standards and Test Procedures—2004 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	2/17/2007	[Insert **Federal Register** citation], 6/16/2016.	Test procedures.
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1961, including Introduction, (a)(1), (a)(3), (a)(4), (a)(5), (a)(7), (a)(8)(B), (a)(14)(A); (b)(1)(A), (b)(1)(B)(1.)(c.), (b)(1)(B)(3.), (b)(1)(C)(1.), (b)(1)(D), (b)(3)(A), (b)(3)(B), (b)(3)(C), (b)(3)(E); (c)(1), (c)(2)(A), (c)(3)(A), (d).	Exhaust Emission Standards and Test Procedures—2004 through 2019 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	"LEV III" exhaust emission standards for 2004 through 2019 model PC, LDT, and MDV; test procedures.
1961, including Introduction, (a)(1), (b)(1)(A), (d).	Exhaust Emission Standards and Test Procedures—2004 through 2019 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	12/31/2012	[Insert **Federal Register** citation], 6/16/2016.	"LEV III" exhaust emission standards for 2004 through 2019 model PC, LDT, and MDV; test procedures.
1961.2	Exhaust Emission Standards and Test Procedures—2015 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	"LEV III" exhaust emission standards for 2015 and subsequent model year PC, LDT, and MDV.
1961.2, including Introduction, (a)(1), (a)(2)(A), (a)(2)(D), (a)(7)(A), (a)(7)(A)(2.) (through equation 2), (A)(9), (b)(1)(A), (b)(1)(A)(2.), (b)(1)(D), (b)(4)(A), (c)(1)(B), (c)(3)(B), and (d).	Exhaust Emission Standards and Test Procedures—2015 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	12/31/2012	[Insert **Federal Register** citation], 6/16/2016.	"LEV III" exhaust emission standards for 2015 and subsequent model year PC, LDT, and MDV.
1962.1	Zero-Emission Vehicle Standards for 2009 through 2017 Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	ZEV standards, percentage ZEV requirements, PZEV provisions, qualification for ZEV multipliers and credits, generation and use of credits, calculation of penalties, test procedures.
1962.1(b)(2)(D)(1) and (2), (c)(3)(A), and (h)(1).	Zero-Emission Vehicle Standards for 2009 through 2017 Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	12/31/2012	[Insert **Federal Register** citation], 6/16/2016.	ZEV requirements for large volume manufacturers in model years 2012 through 2017 and PZEV allowances; test procedures, ZEV-specific definitions.
1962.2, excluding (g)(6)(C)	Zero-Emission Vehicle Standards for 2018 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	ZEV standards, percentage ZEV requirements, TZEV provisions, qualification of ZEV credits, generation and use of credits, test procedures, ZEV-specific definitions; excluded provision relates to GHG–ZEV over compliance credits.
1962.2(c)(2)(B), (c)(3)(A), (c)(3)(A)(1.), (h)(1).	Zero-Emission Vehicle Standards for 2018 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	12/31/2012	[Insert **Federal Register** citation], 6/16/2016.	Certain ZEV requirements in model years 2018 and subsequent model years including evaporative emission standards for TZEVs, TZEV allowances, and test procedures.
1962.3	Electric Vehicle Charging Requirements.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Applicability, definitions, requirements, alternatives.
1965	Emission Control and Smog Index Labels—1979 and Subsequent Model-Year Motor Vehicles.	11/22/1999	[Insert **Federal Register** citation], 6/16/2016.	Emission control label requirements.
1965	Emission Control and Smog Index Labels—1979 and Subsequent Model-Year Motor Vehicles.	12/04/2003	[Insert **Federal Register** citation], 6/16/2016.	Emission control label requirements.
1965	Emission Control, Smog Index, and Environmental Performance Labels—1979 and Subsequent Model-Year Motor Vehicles.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Emission control label requirements.

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
1971.1	On-Board Diagnostic System Requirements—2010 and Subsequent Model-Year Heavy-Duty Engines.	6/17/2010	[Insert **Federal Register** citation], 6/16/2016.	Establishes emission standards and other requirements for OBD systems that monitor emission systems in-use for the actual life of the engine and detect malfunctions of the monitored emissions systems, illuminating a malfunction indicator light to notify the vehicle operator of detected malfunctions, and storing fault codes identifying the detected malfunctions.
1971.5	Enforcement of Malfunction and Diagnostic System Requirements for 2010 and Subsequent Model-Year Heavy-Duty Engines.	6/17/2010	[Insert **Federal Register** citation], 6/16/2016.	Establishes enforcement protocol for use by CARB to assure the engines certified for sale in California are equipped with OBD systems that properly function and meet the applicable regulatory requirements.
1976(c)	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions.	2/17/2007	[Insert **Federal Register** citation], 6/16/2016.	Test procedures.
1976(b)(1), (c), (f)(3) and (f)(4)	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Fuel evaporative emission standards; test procedures; definitions.
1976(b)(1), (b)(1)(G)(3), (c)	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions.	12/31/2012	[Insert **Federal Register** citation], 6/16/2016.	Fuel evaporative emission standards; test procedures; definitions.
1978(a)(1), (b)	Standards and Test Procedures for Vehicle Refueling Emissions.	12/4/2003	[Insert **Federal Register** citation], 6/16/2016.	Standards for vehicle refueling for 1998 and subsequent model passenger cars, LDT, and MDV less than 8,501 pounds.
1978(b)	Standards and Test Procedures for Vehicle Refueling Emissions.	2/17/2007	[Insert **Federal Register** citation], 6/16/2016.	Test procedures.
1978	Standards and Test Procedures for Vehicle Refueling Emissions.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Refueling emissions standards for 1998 and subsequent model gasoline-fueled, alcohol-fueled, diesel-fueled, LPG-fueled, fuel-flexible and hybrid electric PC, LDT, and MDV up to 8,501 pounds, and similarly-fueled 2015 and subsequent year MDV from 8,501 pounds to 14,000 pounds.
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Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 1 (Motor Vehicle Pollution Control Devices), Article 6 (Emission Control Warranty System)				
2037(g)	Defects Warranty Requirements for 1990 and Subsequent Model Passenger Cars, Light-Duty Trucks, Medium-Duty Vehicles, and Motor Vehicle Engines Used in Such Vehicles.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Reporting requirements.
2038(c)(3)	Performance Warranty Requirements for 1990 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, and Motor Vehicle Engines Used in Such Vehicles.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Reporting requirements.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 2 (Enforcement of Vehicle Emission Standards and Surveillance Testing), Article 1 (Assembly-Line Testing)				
2062	Assembly-Line Procedures—1998 and Subsequent Model Years.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Assembly-line test procedures.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 2 (Enforcement of Vehicle Emission Standards and Surveillance Testing), Article 2.1 (Procedures for In-Use Vehicle Voluntary and Influenced Recalls)				
2111(a)(1)	Applicability	8/15/2007	[Insert **Federal Register** citation], 6/16/2016.	Procedures apply to California-certified 1982 and subsequent model-year passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles, motorcycles, and 1997 and subsequent model-year off-road motorcycles and all-terrain vehicles, and 2007 and subsequent model-year off-road sport vehicles, off-road utility vehicles, and sand cars.

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
2111(a)(4)	Applicability	8/16/2009	[Insert **Federal Register** citation], 6/16/2016.	Procedures apply to certain California-certified 2008 model year spark-ignition sterndrive/inboard marine engines with maximum rated power less than or equal to 373 kilowatts, and all California-certified 2009 and subsequent model-year spark-ignition sterndrive/inboard marine engines.
2112(l)(12)	Definitions	8/15/2007	[Insert **Federal Register** citation], 6/16/2016.	Definition of "useful life" for 1997 and subsequent model year off-road motorcycles, all-terrain vehicles, and for 2007 and subsequent model year off-road sport vehicles, off-road utility vehicles, sand cars, and engines used in such vehicles.
2112(l)(20), (l)(23)	Definitions	8/16/2009	[Insert **Federal Register** citation], 6/16/2016.	Definition of "useful life" for certain types of vehicles.
2112(b), (l)(9), (l)(18)	Definitions	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Definition of "correlation factor," and definition of "useful life" for certain types of vehicles.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 2 (Enforcement of Vehicle Emission Standards and Surveillance Testing), Article 2.3 (In-Use Vehicle Enforcement Test Procedures)				
2139(h)	Testing	8/16/2009	[Insert **Federal Register** citation], 6/16/2016.	Specifies in-use compliance tests for spark-ignition sterndrive/inboard marine engines.
2139(a), (b), (c)(2)	Testing	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Specifies in-use vehicle emission tests by CARB after vehicles have been accepted and restorative maintenance, if any, has been performed.
2140(b)	Notification and Use of Test Results	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Notification and use requirements once the in-use emission tests have been completed.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 2 (Enforcement of Vehicle Emission Standards and Surveillance Testing), Article 2.4 (Procedures for Reporting Failures of Emission-Related Components)				
2145(b)(3)	Field Information Report	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Reporting requirements.
2147(b)	Demonstration of Compliance with Emissions Standards.	8/16/2009	[Insert **Federal Register** citation], 6/16/2016.	Applies the requirements to sterndrive/inboard marine engines.
2147(b)(3)	Demonstration of Compliance with Emissions Standards.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Testing requirements and selection of deterioration factors.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 4.4 (Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks)				
2235	Requirements	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Requirements for 1977 and subsequent model gasoline-fueled motor vehicles with respect to fill pipes and openings.
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Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 5.1 (Standards for Fuels for Nonvehicular Sources)				
2299.3	Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in a California Port.	1/2/2009	[Insert **Federal Register** citation], 6/16/2016.	Requires that any person who owns, operates, container vessel, passenger vessel, or refrigerated cargo vessel that visits a California port comply with section 93118.3 relating to the operation of auxiliary diesel engines on OGV at-berth in a California port. Also applies to any person who owns or operates a port or terminal located at a California port where container, passenger or refrigerated cargo vessels visit.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 1 (Small Off-Road Engines)				
2401(a)(13), (36), (41), (51), (52)	Definitions	5/5/2010	[Insert **Federal Register** citation], 6/16/2016.	Definitions for "eight-hour workday," "professional level," "standard battery package," "zero-emission equipment credits," and "zero-emission equipment engine family."

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
2403(b)(2), (b)(3), (b)(4), (d), (e)(1)	Exhaust Emission Standards and Test Procedures—Small Off-Road Engines.	5/5/2010	[Insert **Federal Register** citation], 6/16/2016.	Low-emitting blue sky series engine requirements, evaporative emission requirements, test procedures.
2404(a)	Emission Control Labels and Consumer Information—1995 and Later Small Off-Road Engines.	11/15/2006	[Insert **Federal Register** citation], 6/16/2016.	The requirements in section 2404 recognize the certain emission-critical or emission-related parts must be properly identified and maintained in order for engines to meet the applicable emissions standards and that information regarding engines' emissions levels may influence consumer choice.
2404(m)(1), (m)(2), (m)(3)	Emission Control Labels and Consumer Information—1995 and Later Small Off-Road Engines.	5/5/2010	[Insert **Federal Register** citation], 6/16/2016.	Zero-emission equipment label content and placement requirements.
2405(b)(1), (b)(2), (h)(1), (h)(2)	Defects Warranty Requirements for 1995 and Later Small Off-Road Engines.	5/5/2010	[Insert **Federal Register** citation], 6/16/2016.	Zero-emission equipment warranty requirements.
2406(b)(1), (b)(2)	Emission Control System Warranty Statement.	5/5/2010	[Insert **Federal Register** citation], 6/16/2016.	Warranty contact requirement.
2408(b)(2), (d)(4), (f)(1), (f)(3), (f)(4), (f)(5), (g)(1)(E), (i)(3), (i)(7).	Emission Reduction Credits—Certification Averaging, Banking, and Trading Provisions.	5/5/2010	[Insert **Federal Register** citation], 6/16/2016.	Limits on use of certification emission credits, certain reporting requirements.
2408.1	Emission Reduction Credits—Zero-Emission Equipment Credits Averaging, Banking, and Trading Provisions.	5/5/2010	[Insert **Federal Register** citation], 6/16/2016.	Applicability; general provisions; averaging, banking, and trading provisions; credit calculation and compliance provisions; use of zero-emission equipment credit; recordkeeping and reporting.
2409(a), (b)(1), (b)(2), (b)(5), (b)(6), (d)(3).	Emission Reduction Credits—Production Credit Program for New Engines.	5/5/2010	[Insert **Federal Register** citation], 6/16/2016.	Applicability; general provisions; certain banking provisions.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 3 (Off-Highway Recreational Vehicles and Engines)				
2411(a)(1), (a)(13), (a)(17), (a)(18), (a)(19).	Definitions	8/15/2007	[Insert **Federal Register** citation], 6/16/2016.	Definitions for "all-terrain vehicle," off-highway recreational vehicle engines," "off-road sport vehicle," "off-road utility vehicle," "sand car."
2412	Emission Standards and Test Procedures—New Off-Highway Recreational Vehicles and Engines.	8/15/2007	[Insert **Federal Register** citation], 6/16/2016.	Exhaust and evaporative emissions standards for off-highway recreational vehicles and engines used in such vehicles produced on or after January 1, 1997 that are sold, leased, used, or introduced into commerce in California; test procedures.
2413	Emission Control Labels—New Off-Highway Recreational Vehicles.	8/15/2007	[Insert **Federal Register** citation], 6/16/2016.	Provisions related to applicability, and label content and location.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 4 (Off-Road Compression-Ignition Engines and Equipment)				
2420	Applicability	1/6/2006	[Insert **Federal Register** citation], 6/16/2016.	Applies to new heavy-duty off-road CI engines produced on or after January 1, 1996 and all other new 2000 model year and later off-road CI engines, except those covered by the preemption provisions in CAA section 209(e)(1). Certification required for new engines subject to 13 CCR chapter 9, article 4.
2421	Definitions	1/6/2006	[Insert **Federal Register** citation], 6/16/2016.	Defined terms in addition to hose in 13 CCR § 1900(b).
2423	Exhaust Emission Standards and Test Procedures—Off-Road Compression-Ignition Engines.	1/6/2006	[Insert **Federal Register** citation], 6/16/2016.	Exhaust emissions standards (tiers 1, 2, 3 and 4), upper limits for family emission limits (tiers 1, 2, 3 and 4), low-emitting blue sky series engine requirements, crankcase emissions provisions, early certification provisions, prohibition on defeat devices, test procedures, recordkeeping and compliance calculations, economic hardship provisions, allowance for production of engines, labeling requirements,

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
2424	Emission Control Labels—1996 and Later Off-Road Compression-Ignition Engines.	1/6/2006	[Insert **Federal Register** citation], 6/16/2016.	Requirements on manufacturers to affix a label on each production engine (or equipment) to provide the engine or equipment owner and service mechanic with information necessary for the proper maintenance of these parts in customer use.
2424(a)	Emission Control Labels—1996 and Later Off-Road Compression-Ignition Engines.	11/15/2006	[Insert **Federal Register** citation], 6/16/2016.	The requirements of section 2424 recognize that certain emissions-critical or emissions-related parts must be properly identified and maintained in order for engines to meet the applicable emissions standards.
2425	Defects Warranty Requirements for 1996 and Later Off-Road Compression-Ignition Engines.	1/6/2006	[Insert **Federal Register** citation], 6/16/2016.	Applies to new 1996–1999 model year heavy-duty off-road CI engines and new 2000 and later model year CI engines.
2425(e)	Defects Warranty Requirements for 1996 and Later Off-Road Compression-Ignition Engines.	11/15/2006	[Insert **Federal Register** citation], 6/16/2016.	Requirement on manufacturers to furnish with each new engine written instructions for the maintenance and use of the engine by the owner.
2425.1	Defect Investigation and Reporting Requirements.	1/6/2006	[Insert **Federal Register** citation], 6/16/2016.	Applicability, general provisions, and investigation and reporting procedures.
2426	Emission Control System Warranty Statement.	1/6/2006	[Insert **Federal Register** citation], 6/16/2016.	Requires manufacturers to furnish a specific warranty statements with each 1996–1999 heavy-duty off-road CI engine.
2427	Production Engine Testing, Selection, Evaluation, and Enforcement Action.	1/6/2006	[Insert **Federal Register** citation], 6/16/2016.	Compliance test procedures, quality-audit test procedures, selective enforcement audit requirements.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 4.5 (Off-Road Large Spark-Ignition Engines)				
2430	Applicability	5/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Applies to LSI off-road engines 25 horsepower or greater after 1/1/2001 and all equipment and vehicles after 1/1/2001 that use such engines. On 1/1/2007, applicability remains the same but is defined in terms of kW (*i.e.*, 19 kW and above).
2431(a), (a)(19), (a)(28)	Definitions	5/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Definitions of "Family Emission Level or FEL" and "Off-Road Large Spark-Ignition Engines" or "LSI Engines."
2433	Emission Standards and Test Procedures—Off-Road Large Spark Ignition Engines.	5/12/2007	[Insert **Federal Register** citation], 6/16/2016.	New off-road LSI exhaust, crankcase, and evaporative emission standards and test procedures.
2434(c)	Emission Control Labels—2001 and Later Off-Road Large Spark-Ignition Engines.	5/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Label content and location requirements.
2438(e)(7)	In-Use Compliance Program	5/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Credit calculation.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 4.7 (Spark-Ignition Marine Engines)				
2440(a)(3)	Applicability	8/16/2009	[Insert **Federal Register** citation], 6/16/2016.	Exemption for spark-ignition sterndrive/inboard marine engines used solely for competition.
2442(a)(1), (a)(2), (b), (c), (d), (e), (f), (g), (h).	Emissions Standards	8/16/2009	[Insert **Federal Register** citation], 6/16/2016.	Model year 2001 and later model year spark-ignition personal watercraft and outboard marine engines; model year 2003 and later model year spark-ignition sterndrive/inboard marine engines; Not-to-Exceed (NTE) limits; voluntary standards; new replacement engine requirements for manufacturers; test equipment and test procedures.
2443.1(b)(1), (c)(2)(B), (c)(4)(B), (c)(4)(D), (c)(4)(G), (c)(4)(H), (d)(4)(B).	Emission Control Labels—Model Year 2001 and Later Spark-Ignition Marine Engines.	8/16/2009	[Insert **Federal Register** citation], 6/16/2016.	Requirements related to emission control labels.
2443.2(b)(1), (c)(1), (c)(2), (e)	Consumer/Environmental Label Requirements.	8/16/2009	[Insert **Federal Register** citation], 6/16/2016.	Label requirements for certified model year 2001 and later spark-ignition personal watercraft and outboard marine engines and certified model year 2003 and later spark-ignition sterndrive/inboard engines.

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
2444.1(a), (b)(3)(B), (b)(3)(E), (b)(3)(G), (e)(4)(A)(1. Through 10.), (e)(4)(B), (e)(4)(C)(1., 2., and 3.).	In-Use Compliance Testing and Recall Regulations—Model Year 2001 and Later Spark-Ignition Marine Engines.	8/16/2009	[Insert **Federal Register** citation], 6/16/2016.	Recordkeeping and reporting requirements.
2444.2	On-Board Engine Malfunction Detection System Requirements—Model Year 2007 and Later Spark-Ignition Sterndrive/Inboard Marine Engines.	8/16/2009	[Insert **Federal Register** citation], 6/16/2016.	General requirements; monitoring requirements; additional audio/visual alert device activation and diagnostic trouble code storage protocol; tampering protection; certification documentation; testing, standardization, and implementation schedule.
2445.1(a), (c)(1), (c)(2), (c)(3), (e)(10), (e)(11), (g)(2)(A).	Defects Warranty Requirements for Model Year 2001 and Later Spark-Ignition Marine Engines.	8/16/2009	[Insert **Federal Register** citation], 6/16/2016.	Warranty requirements.
2445.2(a)	Emission Control Warranty Statements	8/16/2009	[Insert **Federal Register** citation], 6/16/2016.	Emission control warranty statement requirements.
2446(a), (b)(4)(B), (c)(1)(A), (c)(1)(B), (c)(2)(A), (c)(3)(D), (c)(3)(E), (d)(3)(D), (d)(5), (e).	2001 and Later Model Year Production-Line Test Procedures and Selective Enforcement Auditing Regulations for Spark-Ignition Marine Engines.	8/16/2009	[Insert **Federal Register** citation], 6/16/2016.	Applicability provision; certain quality-audit line test procedures for 2001 and later model years; test procedures; selective enforcement auditing regulations.
2447	California Exhaust Emission Standards and Test Procedures for 2001 Model Year and Later Spark-Ignition Marine Engines.	8/16/2009	[Insert **Federal Register** citation], 6/16/2016.	Certain test procedures are incorporated by reference.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 4.8 (In-Use Off-Road Diesel-Fueled Fleets)				
2449, excluding (d)(2)	General Requirements for In-Use Off-Road Diesel-Fueled Fleets.	12/14/2011	[Insert **Federal Register** citation], 6/16/2016.	Applicability, definitions, performance requirements (different requirements apply to large, medium and small fleets), compliance date extension provision, labeling requirements, reporting and recordkeeping requirements. Excluded subsection relates to idling limits.
2449.1	Performance Requirements	12/14/2011	[Insert **Federal Register** citation], 6/16/2016.	Establishes fleet average requirements and compliance dates, BACT provisions, credit provisions.
2449.2, excluding (f)(4)	Surplus Off-Road Opt-In for NO_X (SOON) Program.	12/14/2011	[Insert **Federal Register** citation], 6/16/2016.	Purpose is to achieve additional reductions of NO_X from in-use off-road diesel-fueled vehicles beyond those achieved through implementation of the requirements in 13 CCR §§ 2449 and 2449.1. Applicability, definitions, requirements, SOON targets, local air district opt-in provisions.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 5 (Portable Engine and Equipment Registration)				
2451	Applicability	09/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Voluntary registration program for owners or portable engines or equipment units, with certain exceptions. If not registered under this program, the engine or equipment units shall be subject to district permitting requirements pursuant to district regulations.
2452	Definitions	09/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Definitions that apply to the portable engine and equipment registration regulations.
2453	Application Process	09/12/2007	[Insert **Federal Register** citation], 6/16/2016.	To be considered for registration, portable engines or equipment units must meet the requirements in article 5, including the application-related requirements in this section.
2455, excluding (a) and (b)	General Requirements	09/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Provisions related to operation of portable engines and equipment units during emergency events; PSD notification requirements if the registered equipment unit operates at a major stationary source. Excluded subsections relate to attainment or maintenance of ambient air quality standards, nuisance, and opacity.

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
2456, excluding (a), (d)(3), (d)(5), and (d)(6).	Engine Requirements	09/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Various requirements specified for different categories of engines. Excluded subsections relate to opacity limits, fuel specifications, and daily and annual mass (per engine) limits.
2458	Recordkeeping and Reporting	09/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Recordkeeping and reporting requirements for owners of registered portable engines and equipment units.
2459	Notification	09/12/2007	[Insert **Federal Register** citation], 6/16/2016.	In most instances, if a registered equipment unit will be at a location for more than five days, the owner or operator of that equipment must notify the district in writing.
2460	Inspections and Testing	09/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Authorization for CARB to conduct testing both before and after registration in the program. Districts must inspect all register engines and equipment units for which the district has been designated as the home district. Test methods are specified.
2461	Fees	09/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Provisions establishing fees for registration, renewal, and associated administrative tasks.
2462	Duration of Registration	09/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Registrations and renewal are generally valid for three years from the date of issuance.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 7 (Certification Procedures for Aftermarket Parts for Off-Road Vehicles, Engines, Equipment)				
2474(e), (l)(1)	Add-On Parts and Modified Parts	08/16/2009	[Insert **Federal Register** citation], 6/16/2016.	Incorporation of procedures for exemptions of add-on and modified parts for off-road categories.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 9 (Off-Road Vehicles and Engines Pollution Control Devices), Article 8 (Off-Road Airborne Toxic Control Measures)				
2477	Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets, and Facilities Where TRUs Operate.	3/7/2011	[Insert **Federal Register** citation], 6/16/2016.	Regulation applies, with certain exceptions, to owners and operators of diesel fueled TRUs and TRU generator sets used to power electrically drive refrigerated shipping containers and trailers that are operated in California; definitions; in-use performance standards; in-use compliance dates; monitoring, recordkeeping and reporting requirements; prohibitions; penalties.
2479, excluding (e)(2) and (e)(4)	Regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards.	12/31/2006	[Insert **Federal Register** citation], 6/16/2016.	Applies to any person who conducts business in California who sells, offers for sale, leases, rents, purchases, owns or operates any CI mobile cargo handling equipment that operates at any California port or intermodal rail yard. Includes exemptions, definitions, performance standards for newly purchased leased or rented yard trucks and non-yard truck cargo handling equipment, provisions for compliance extensions and alternative compliance plans, recordkeeping and reporting requirements, test methods. Excluded subsections relate to in-use performance standards for yard trucks, and fuel requirements.
2479(a), (b), (c), (d), (e)(1), (e)(3), (e)(5), (f)(1), (f)(2), (f)(3), (f)(6), (h)(1), (i), (j)(1), (j)(2), (j)(3), (k), (l), (m), (n), (o), (p), (q), (r).	Regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards.	10/14/2012	[Insert **Federal Register** citation], 6/16/2016.	Amendments to exemptions, definitions, performance standards for newly purchased leased or rented equipment and in-use performance standards for non-yard truck mobile CHE, provisions for compliance extensions and alternative compliance plans, recordkeeping and reporting requirements, test methods.

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS[1]—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 10 (Mobile Source Operational Controls), Article 1 (Motor Vehicles)				
2485, excluding (c)(1)(A), (c)(1)(B), (c)(3)(B).	Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling.	11/15/2006	[Insert **Federal Register** citation], 6/16/2016.	Establishes requirements to reduce emissions from idling of diesel-fueled commercial motor vehicles that operate in California with gross vehicle weight ratings greater than 10,000 pounds; exceptions; enforcement and penalty provisions; definitions. Excluded subsections relate to idling restrictions on drivers and a fuel-fired heater provision.
* * * * * * *				
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 15 (Additional Off-Road Vehicles and Engines Pollution Control Requirements), Article 2 (Large Spark Ignition (LSI) Engines Fleet Requirements)				
2775	Applicability	5/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Applies to operators of certain off-road LSI engine forklifts, sweepers/scrubbers, industrial tow tractors or airport ground support equipment operated within the State of California. Exemptions provided for small fleets and certain other equipment. Includes definitions.
2775.1	Standards	5/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Establishes fleet average emission level standards with certain exceptions.
2775.2	Compliance Requirements for Fleet Operators.	5/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Compliance and recordkeeping requirements, provisions for extensions in compliance dates.
* * * * * * *				
93116	Purpose	3/11/2005	[Insert **Federal Register** citation], 6/16/2016.	Purpose is to reduce diesel particulate matter emissions from portable diesel-fueled engines having a rated brake horsepower of 50 and greater.
93116.1	Applicability	3/11/2005	[Insert **Federal Register** citation], 6/16/2016.	Applies to all portable engines having a maximum rated horse horsepower of 50 bhp and greater and fueled with diesel unless exempted under (b).
93116.2	Definitions	3/11/2005	[Insert **Federal Register** citation], 6/16/2016.	Defines specific terms used in the regulation.
93116.3, excluding (a)	Requirements	3/11/2005	[Insert **Federal Register** citation], 6/16/2016.	Diesel PM standards for in-use portable diesel-fueled engines; different requirements apply to such engines not permitted or registered prior to January 1, 2006; fleet requirements (for subject engines operated in California), fleet average calculation provisions. Excluded subsection relates to fuel requirements.
93116.4	Fleet Recordkeeping and Reporting Requirements.	3/11/2005	[Insert **Federal Register** citation], 6/16/2016.	Fleet recordkeeping and reporting requirements.
93116.5	Enforcement of Fleet Requirements	3/11/2005	[Insert **Federal Register** citation], 6/16/2016.	Authority to review and seek enforcement action for violation of the fleet emission standard.
93118.3	Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in a California Port.	1/2/2009	[Insert **Federal Register** citation], 6/16/2016.	Applicability, exemptions, definitions, vessel in-use operational requirements, calculation procedures for certain options, terminal plan requirements, reporting and recordkeeping requirements.
93118.5, excluding (e)(1)	Airborne Toxic Control Measure for Commercial Harbor Craft.	11/19/2008	[Insert **Federal Register** citation], 6/16/2016.	Applicability, exemptions, definitions, engine emission requirements, alternative control provisions, recordkeeping and reporting requirements, test methods. Excluded subsection relates to the low sulfur fuel use requirement.
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[1] Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in Table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed in paragraph (e).

TABLE 2—EPA-APPROVED CALIFORNIA TEST PROCEDURES, TEST METHODS, AND SPECIFICATIONS

Title/subject	State effective date	EPA approval date	Additional explanation
* * *	*	*	* *
California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles, as last amended September 5, 2003.	12/4/2003	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Motor Vehicle Emission Control and Smog Index Label Specifications for 1978 through 2003 Model Year Motorcycles, Light-, Medium- and Heavy-Duty Engines and Vehicles," as last amended September 5, 2003.	12/4/2003	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.\
California Smog Index Label Specifications for 2004 and Subsequent Model Passenger Cars and Light-Duty Trucks," adopted September 5, 2003.	12/4/2003	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended September 5, 2003.	12/4/2003	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as amended June 22, 2006.	2/17/2007	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended June 22, 2006.	2/17/2007	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust Emission Standards Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended June 22, 2006.	2/17/2007	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles, as last amended March 22, 2012.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines, as last amended March 22, 2012.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Non-Methane Organic Gas Test Procedures, as last amended March 22, 2012.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended March 22, 2012, excluding GHG-related provisions.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Environmental Performance Label Specifications for 2009 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles, as last amended March 22, 2012.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended March 22, 2012.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended March 22, 2012.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
Specifications for Fill Pipes and Openings of 1977 through 2014 Model Motor Vehicle Fuel Tanks, as last amended March 22, 2012.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
Specifications for Fill Pipes and Openings of 2015 and Subsequent Model Motor Vehicle Fuel Tanks, adopted March 22, 2012.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, adopted March 22, 2012, excluding GHG-related provisions.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust Emission Standards and Test Procedures for 2009 through 2017 Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, as last amended March 22, 2012, excluding GHG-related provisions.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.

TABLE 2—EPA-APPROVED CALIFORNIA TEST PROCEDURES, TEST METHODS, AND SPECIFICATIONS—Continued

Title/subject	State effective date	EPA approval date	Additional explanation
California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, adopted March 22, 2012, excluding GHG-related provisions.	8/7/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended December 6, 2012, excluding GHG-related provisions.	12/31/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 Model Greenhouse Gas Exhaust Emission standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended December 6, 2012, excluding GHG-related provisions.	12/31/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Non-Methane Organic Gas Test Procedures, as last amended December 6, 2012.	12/31/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, as last amended December 6, 2012.	12/31/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines, as last amended December 6, 2012.	12/31/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles, as last amended December 6, 2012.	12/31/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust Emission Standards and Test Procedures for 2009 through 2017 Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, as last amended December 6, 2012.	12/31/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, adopted December 6, 2012, excluding GHG-related provisions.	12/31/2012	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-cycle Engines, as last amended December 12, 2002.	12/4/2003	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles, as last amended October 25, 2001.	11/17/2002	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Motor Vehicle Emission Control and Smog Index Label Specifications, as last amended October 22, 1999.	11/22/1999	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines, as last amended September 1, 2006.	11/15/2006	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust Emission Standards and Test Procedures for New 2001 through 2006 Off-Road Large Spark-Ignition Engines, Parts I and II, adopted September 1, 1999 and as last amended March 2, 2007.	5/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust and Evaporative Emission Standards and Test Procedures for 2007 through 2009 Off-Road Large Spark-Ignition Engines, (2007–2009 Test Procedure 1048), adopted March 2, 2007.	5/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines, (2010 and Later Test Procedure 1048), adopted March 2, 2007.	5/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust and Evaporative Emission Standards and Test Procedures for New 2007 and Later Off-Road Large Spark-Ignition Engines (Test Procedures 1065 and 1068), adopted March 2, 2007.	5/12/2007	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust Emission Standards and Test Procedures for 2005 and Later Small Off-Road Engines, as last amended February 24, 2010.	5/5/2010	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.

TABLE 2—EPA-APPROVED CALIFORNIA TEST PROCEDURES, TEST METHODS, AND SPECIFICATIONS—Continued

Title/subject	State effective date	EPA approval date	Additional explanation
California Exhaust Emission Standards and Test Procedures for New 2000 and Later Tier 1, Tier 2, and Tier 3 Off-Road Compression-Ignition Engines, Part I–B, adopted January 28, 2000 and as last amended October 20, 2005.	1/6/2006	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust Emission Standards and Test Procedures for New 1996 and Later Tier 1, Tier 2, and Tier 3 Off-Road Compression-Ignition Engines, Part II, adopted May 12, 1993 and as last amended October 20, 2005.	1/6/2006	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust Emission Standards and Test Procedures for New 2008 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–C, adopted October 20, 2005.	1/6/2006	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust Emission Standards and Test Procedures for 2001 Model Year and Later Spark-Ignition Marine Engines, as last amended June 5, 2009.	8/16/2009	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
Procedures for Exemption of Add-On and Modified Parts for Off-Road Categories, as last amended June 5, 2009.	8/16/2009	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.
California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles, and Engines, as last amended August 15, 2007.	8/15/2007	[Insert **Federal Register** citation], 6/16/2016.	Submitted by CARB on August 14, 2015.

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Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 482 and 485

Medicare and Medicaid Programs; Hospital and Critical Access Hospital (CAH) Changes To Promote Innovation, Flexibility, and Improvement in Patient Care; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 482 and 485

[CMS–3295–P]

RIN 0938–AS21

Medicare and Medicaid Programs; Hospital and Critical Access Hospital (CAH) Changes To Promote Innovation, Flexibility, and Improvement in Patient Care

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the requirements that hospitals and critical access hospitals (CAHs) must meet to participate in the Medicare and Medicaid programs. These proposals are intended to conform the requirements to current standards of practice and support improvements in quality of care, reduce barriers to care, and reduce some issues that may exacerbate workforce shortage concerns.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 15, 2016.

ADDRESSES: In commenting, please refer to file code CMS–3295–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3295–P, P.O. Box 8010, Baltimore, MD 21244.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3295–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: CDR Scott Cooper, USPHS, (410) 786–9465, Mary Collins, (410) 786–3189, Alpha-Banu Huq, (410) 786–8687, Lisa Parker, (410) 786–4665.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding meanings in alphabetical order below:

AAPA	American Academy of Physician Assistants
ACA	Affordable Care Act
AOA	American Osteopathic Association
APIC	Association for Professionals in Infection Control and Epidemiology, Inc.
APRN	Advanced Practice Registered Nurse
AS	Antibiotic Stewardship
BBA	Balanced Budget Act
CAHs	Critical Access Hospitals
CARB	Combating Antibiotic-Resistant Bacteria
CARE	Continuity Assessment Record & Evaluation
CBIC	Certification Board of Infection Control and Epidemiology Inc.
CDI	Clostridium Difficile Infections
CHA	Children's Health Act
CIHQ	Center for Improvement in Healthcare Quality
CLABSIs	Central Line-Associated Bloodstream Infections
CPOE	Computerized Provider Order Entry
CoPs	Conditions of Participation
DNV–GL	DNV–GL Healthcare
DO	Doctor of Osteopathy
DRA	Deficit Reduction Act
EM	Emergency Medicine
EHRs	Electronic Health Records
EWRs	Executive WalkRounds
FDA	Food and Drug Administration
HACs	Hospital-Acquired Conditions
HAIs	Healthcare-Associated Infections
HFAP	Healthcare Facilities Accreditation Program
HICPAC	Healthcare Infection Control Practices Advisory Committee
ICP	Infection Control Professional
IDSA	Infectious Diseases Society of America
IGs	Interpretive Guidelines
IOM	Institute of Medicine
IPPS	Inpatient Prospective Payment System
IT	Information Technology
LGBT	Lesbian, Gay, Bisexual, and Transgender
LIP	Licensed Independent Practitioner
MBQIP	Medicare Beneficiary Quality Improvement Project
MD	Doctor of Medicine
MDROs	Multi-Drug Resistant Organisms
MedPAC	Medicare Payment Advisory Commission
MRHFP	Medicare Rural Hospital Flexibility Program
NHSN	National Healthcare Safety Network
NQF	National Quality Forum
OBRA	Omnibus Budget Reconciliation Act
OCR	Office for Civil Rights
OIG	Office of Inspector General
PA	Physician Assistant
PCP	Primary Care Provider
PN	Parenteral Nutrition
QAPI	Quality Assessment and Performance Improvement
QIO	Quality Improvement Organization
RDs	Registered Dietitians
RPCHs	Rural Primary Care Hospitals

SHEA Society for Healthcare Epidemiology of America
TJC The Joint Commission
VBP Value-Based Purchasing

Table of Contents

This proposed rule is organized as follows:

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I. Background

A. Executive Summary

These proposed changes would modernize hospital and critical access hospital (CAH) requirements, improve quality of care, and support HHS and CMS priorities. We believe that benefits of the proposed revisions would include; reduced incidence of hospital-acquired conditions (HACs), including reduced incidence of healthcare-associated infections (HAIs); reduced inappropriate antibiotic use; and strengthened patient protections overall. Specifically, we propose to revise the conditions of participation (CoPs) for hospitals and CAHs to address:

- Discriminatory behavior by healthcare providers that may create real or perceived barriers to care;
- Use of the term "Licensed Independent Practitioners" (LIPs) that may inadvertently exacerbate workforce shortage concerns;
- Requirements that do not fully conform to current standards for infection control;
- Requirements for antibiotic stewardship programs to help reduce inappropriate antibiotic use and antimicrobial resistance; and
- The use of quality reporting program data by hospital Quality Assessment and Performance Improvement (QAPI) programs.

B. Statutory Basis and Purpose of the Conditions of Participation for Hospitals and Critical Access Hospitals

Sections 1861(e)(1) through (8) of the Social Security Act (the Act) provide that a hospital participating in the Medicare program must meet certain specified requirements. Section 1861(e)(9) of the Act specifies that a hospital also must meet such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals furnished services in the institution. Under this authority, the Secretary has established regulatory requirements that a hospital must meet to participate in Medicare at 42 CFR part 482, CoPs for Hospitals. Section 1905(a) of the Act provides that Medicaid payments from States may be applied to hospital services. Under regulations at 42 CFR 440.10(a)(3)(iii) and 42 CFR 440.20(a)(3)(ii), hospitals are required to meet the Medicare CoPs in order to participate in Medicaid.

On May 26, 1993, CMS published a final rule in the **Federal Register** entitled "Medicare Program; Essential Access Community Hospitals (EACHs) and Rural Primary Care Hospitals (RPCHs)" (58 FR 30630) that implemented sections 6003(g) and 6116 of the Omnibus Budget Reconciliation Act (OBRA) of 1989 and section 4008(d) of OBRA 1990. That rule established requirements for the EACH and RPCH providers that participated in the seven-state demonstration program that was designed to improve access to hospital and other health services for rural residents.

Sections 1820 and 1861(mm) of the Act, as amended by section 4201 of the Balanced Budget Act (BBA) of 1997, replaced the EACH/RPCH program with the Medicare Rural Hospital Flexibility Program (MRHFP), under which a qualifying facility can be designated and certified as a CAH. CAHs participating in the MRHFP must meet the conditions for designation specified in the statute under section 1820(c)(2)(B) of the Act, and to be certified must also meet other criteria the Secretary may require, under section 1820(e)(3) of the Act. Under this authority, the Secretary has established regulatory requirements that a CAH must meet to participate in Medicare at 42 CFR part 485, subpart F.

The CoPs for hospitals and CAHs are organized according to the types of services a hospital or CAH may offer, and include specific, process oriented requirements for each hospital or CAH service or department. The purposes of these conditions are to protect patient health and safety and to ensure that quality care is furnished to all patients in Medicare-participating hospitals and CAHs. In accordance with Section 1864 of the Act, State surveyors assess hospital and CAH compliance with the conditions as part of the process of determining whether a hospital qualifies for a provider agreement under Medicare. However, under section 1865 of the Act, hospitals and CAHs can elect to be reviewed instead by private accrediting organizations approved by CMS as having standards that meet or exceed the applicable Medicare standards and survey procedures comparable to those CMS requires for State survey agencies. CMS-approved hospital and CAH accrediting programs include those of The Joint Commission (TJC), the American Osteopathic Association/Healthcare Facilities Accreditation Program (AOA/HFAP), and DNV–GL Healthcare (DNV–GL) (See 42 CFR part 488, Survey and Certification Procedures). The Center for Improvement in Healthcare Quality (CIHQ) also has a CMS-approved hospital accrediting program.

C. Why revise the conditions of participation?

CMS is aware, through conversations with stakeholders and federal partners, and as a result of internal evaluation and research, of continuing concerns about the conditions of participation for hospitals and CAHs despite recent revisions to the CoPs. We believe that the proposed revisions would address many of those concerns. In addition, modernization of the requirements would cumulatively result in improved quality of care and improved outcomes for all hospital and CAH patients. We believe that benefits would include reduced readmissions, reduced incidence of hospital-acquired conditions (including healthcare-associated infections), improved use of antibiotics at reduced costs (including the potential for reduced antibiotic resistance), and improved patient and workforce protections.

These benefits are consistent with current HHS Quality Initiatives, including efforts to prevent HAIs; the national action plan for adverse drug event (ADE) prevention; the national strategy for Combating Antibiotic-Resistant Bacteria (CARB); and the Department's National Quality Strategy (*http://www.ahrq.gov/workingforquality/index.html*). The *National Action Plan for Combating*

Antibiotic-Resistant Bacteria, which was developed by the interagency Task Force for Combating Antibiotic-Resistant Bacteria in response to Executive Order 13676: "Combating Antibiotic-Resistant Bacteria," (79 FR 56931, Sept. 23, 2014), outlines steps for implementing the *National Strategy on Combating Antibiotic-Resistant Bacteria* and addressing the policy recommendations of the President's Council of Advisors on Science and Technology report on *Combating Antibiotic Resistance.* The Action Plan includes activities to foster improvements in the appropriate use of antibiotics (that is, antibiotic stewardship) by improving prescribing practices across all healthcare settings, particularly establishment of antimicrobial stewardship programs in all acute care hospitals by 2020 (*https://www.whitehouse.gov/the-press-office/2015/03/27/fact-sheet-obama-administration-releases-national-action-plan-combat-ant*). Our proposal to require hospitals to establish and maintain antibiotic stewardship programs would directly support this goal. In addition, principles of the National Quality Strategy supported by this proposed rule include eliminating disparities in care, improving quality, promoting consistent national standards while maintaining support for local, community, and State-level activities that are responsive to local circumstances; care coordination, and providing patients, providers, and payers with the clear information they need to make choices that are right for them (*http://www.ahrq.gov/workingforquality/nqs/principles.htm*). Our proposal to prohibit discrimination would support eliminating disparities in care, and we believe our proposals about QAPI and infection prevention and control and antibiotic stewardship programs would improve quality and promote consistent national standards. Our proposals regarding nursing services and the term "licensed independent practitioners" would support care coordination and quality of care. In sum, we believe our proposed changes are necessary, timely, and beneficial.

II. Provisions of the Proposed Rule

A. Patient's Rights (§ 482.13)

1. Non-Discrimination

One of the basic requirements for providers who participate in the Medicare program is that, they must agree to meet the applicable civil rights requirements of Title VI of the Civil Rights Act of 1964, as implemented by 45 CFR part 80; section 504 of the Rehabilitation Act of 1973, as implemented by 45 CFR part 84; the Age Discrimination Act of 1975, as implemented by 45 CFR part 90; Section 1557 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148) (Section 1557); and other pertinent requirements enforced by the HHS Office for Civil Rights (OCR) (see 42 CFR 489.10(b)). Title VI prohibits discrimination based on race, color, and national origin. Section 504 prohibits discrimination based on disability. The Age Act prohibits discrimination based on age. Section 1557 of the Affordable Care Act prohibits discrimination on all of these bases and is the first federal civil rights law to prohibit discrimination based on sex, including gender identity, in covered health programs and activities. In addition, the Hospital and CAH Conditions of Participation (CoPs) require that hospitals and CAHs be in compliance with applicable Federal laws related to the health and safety of patients. However, there is currently no explicit prohibition of discrimination contained within the Hospital and CAH CoPs. We have been made aware that the historic lack of an explicit prohibition within the CoPs, and, in particular, the lack of civil rights protections regarding hospital patients' gender identities, is regarded as having been a barrier to seeking care by individuals who fear such discrimination. Discriminatory behavior, or even the fear of discriminatory behavior, by healthcare providers remains an issue and can create barriers to care and result in adverse outcomes for patients. Numerous studies address the impact of discrimination or perceived discrimination on individuals seeking healthcare. Discrimination can be based on sexual orientation, racial or ethnic background, or other factors. The Institute of Medicine (IOM) noted in its 2011 report *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* that many lesbian, gay, bisexual, and transgender (LGBT) people refrain from disclosing their sexual orientation or gender identity to researchers and health care providers. The report goes on to note that:

> Some LGBT individuals face discrimination in the health care system that can lead to an outright denial of care or to the delivery of inadequate care. There are many examples of manifestations of enacted stigma against LGBT individuals by health care providers. LGBT individuals have reported experiencing refusal of treatment by health care staff, verbal abuse, and disrespectful behavior, as well as many other forms of failure to provide adequate care (Eliason and Schope, 2001; Kenagy, 2005; Scherzer, 2000; Sears, 2009 as cited in Institute of Medicine. The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding. Washington, DC: The National Academies Press, 2011.)

Perceived discriminatory behavior among African-American and white patients treated for osteoarthritis by orthopedic surgeons in two Veterans Affairs facilities negatively affected patient-provider communications (Leslie R.M. Hausmann, Ph.D., Michael J. Hannon, MA, Denise M. Kresevic, RN, Ph.D., Barbara H. Hanusa, Ph.D., C. Kent Kwoh, MD, and Said A. Ibrahim, MD, MPH. Med Care. 2011 July; 49(7): 626–633). Tracy MacIntosh et al report that racial/ethnic minorities who reported being socially-assigned as white are more likely to receive preventive vaccinations and less likely to report healthcare discrimination compared with those who are socially-assigned as minority. (MacIntosh T, Desai MM, Lewis TT, Jones BA, Nunez-Smith M (2013) Socially-Assigned Race, Healthcare Discrimination and Preventive Healthcare Services. PLoS ONE 8(5): e64522. doi:10.1371/journal.pone.0064522). In a 2012 study, the authors found that African-American and Asian immigrant participants reported experiencing different forms of medical discrimination related to class, race, and language. (Thu Quach, Ph.D., MPH, Amani Nuru-Jeter, Ph.D., MPH, Pagan Morris, MPH, Laura Allen, BA, Sarah J. Shema, MS, June K. Winters, BA, Gem M. Le, Ph.D., MHS, and Scarlett Lin Gomez, Ph.D. Am J Public Health. 2012;102:1027–1034. doi:10.2105/AJPH.201.1300554).

Because discriminatory behavior can affect perceived and actual access to and effectiveness of healthcare delivery, we propose to establish explicit requirements that a hospital not discriminate on the basis of race, color, national origin, sex (including gender identity), age, or disability and that the hospital establish and implement a written policy prohibiting discrimination on the basis of race, color, national origin, sex (including gender identity), age, or disability. We are proposing these requirements to ensure nondiscrimination as required by Section 1557 of the Affordable Care Act, which prohibits health programs and activities that receive federal financial assistance, such as Medicare and Medicaid, from excluding or denying beneficiaries participation based on their race, color, national origin, sex (including gender identity), age, or disability. In addition, we believe that discrimination by a hospital based on a patient's religion or sexual orientation can potentially lead to a denial of services or inadequate care in the hospital, which is detrimental to the patient's health and safety. We are therefore also proposing to establish explicit requirements that a hospital not discriminate on the basis of religion or sexual orientation and that a hospital establish and implement a written policy prohibiting discrimination on the basis of religion or sexual orientation. We are doing so under the statutory authority of Section 1861(e)(9) of the Act, which specifies that a hospital "must also meet other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the facility." As noted, substantial academic research demonstrates that discrimination on the basis of sexual orientation is inconsistent with the health and safety of patients, as this may lead to a denial of services not justified by a medically appropriate rationale.

We propose to further require that each patient, and/or representative, and/or support person, where appropriate, is informed, in a language he or she can understand, of the right to be free from discrimination against them on any of these bases when he or she is informed of his or her other rights under § 482.13. In addition, we propose to require that the hospital inform the patient and/or representative, and/or support person, on how he or she can seek assistance if they encounter discrimination. A patient's "support person" does not necessarily have to be the patient's representative who is legally responsible for making medical decisions on the patient's behalf. A support person could be a family member, friend, or other individual who is there to support the patient during the course of the stay. We discuss the meaning of "support person" in the preamble to the final rule, "Medicare and Medicaid Programs: Changes to the Hospital and Critical Access Hospital Conditions of Participation To Ensure Visitation Rights for All Patients" (75 FR 70833, November 19, 2010).

2. Licensed Independent Practitioners

On May 16, 2012, we published a final rule entitled "Medicare and Medicaid Programs: Reform of Hospital and Critical Access Hospital Conditions of Participation" (77 FR 29034). Within the section of this rule discussing the changes to § 482.13, one commenter requested that CMS make a clarifying statement regarding the requirements at § 482.13(e)(5) that would identify which practitioners could order restraint or seclusion in a hospital (77 FR 29043). The commenter noted that the current requirements use the term "LIP" and that this has been interpreted by many hospitals to mean that a physician assistant (PA) could not order restraint and/or seclusion. The commenter expressed opposition to this interpretation and suggested instead that CMS clarify that, where permitted by State law, a physician would be permitted to delegate the ordering of such measures to a physician assistant. The commenter also requested that CMS provide a clarifying statement that PAs would be authorized to order restraint and seclusion.

Our response to this comment in the final rule referred to Appendix A of the State Operations Manual, CMS Pub. 100–07, regarding § 482.13(e)(5), which provides, "For the purpose of ordering restraint or seclusion, an LIP is any practitioner permitted by State law and hospital policy as having the authority to independently order restraints or seclusion for patients." We also stated in our response in the final rule that, "if an individual physician assistant (PA) was authorized by State law and hospital policy to independently order restraints or seclusion for patients, then that PA could do so within the hospital. However, since PAs have traditionally defined themselves as 'physician-dependent' practitioners (as opposed to APRNs, who see themselves as independent practitioners), it is unlikely that a PA would be authorized by State law and hospital policy to 'independently' order restraints or seclusions for patients (as would be likely for licensed independent practitioners such as physicians, APRNs, and clinical psychologists). The supervising physician-PA team concept (and PA practice dependence on the supervising physician) is supported by the American Academy of Physician Assistants' description of the PA profession:

'Physician assistants are health professionals licensed or, in the case of those employed by the federal government, credentialed to practice medicine with physician supervision' (American Academy of Physician Assistants. (2009–2010). Policy Manual. Alexandria, VA.).

Moreover, a PA would not be allowed to order restraints or seclusion if the only authority to do so was delegated by a physician since this physician-delegated authority would establish that the PA was not independently authorized by State law and hospital policy, which we stated is a prerequisite for this type of order."

After publication of the final rule in May of 2012, we became aware of the concerns of the American Academy of Physician Assistants (AAPA) regarding this issue, both through communications from the AAPA and through the AAPA's submissions in response to the Secretary's Request for Regulatory Issues Unfairly Impacting Rural Providers. The AAPA maintains that "'Licensed Independent Practitioner' is not a term used in the Social Security Act, nor in any other federal law," and that "the LIP terminology is, at best, confusing regarding physician assistants' ability to order [restraint and seclusion]; at worst, it restricts the ability of hospitals to utilize PAs to the extent of their educational preparation and scope of practice, as determined by state law." The AAPA further contends that "'independent' practice is not a measure of a healthcare professional's educational preparation, competency, or ability to provide quality medical care," and that "the LIP terminology is inconsistent with the movement toward team-based health care delivery, as well as the need to fully utilize the healthcare workforce."

In drafting this proposed rule, we took these arguments into careful consideration. We also reviewed the Children's Health Act (CHA) of 2000 (Pub. L. 106–310), which necessitated the changes to the Patients' Rights CoP § 482.13, as well as the 2006 final rule that implemented these changes, and determined that the term "licensed independent practitioner" was carried over into the CoPs from an earlier version of the bill that eventually became law as the CHA. The CHA only uses the term "other licensed practitioner," dropping the "independent" modifier. Taking this into consideration, we are proposing to delete the modifying term "independent" from the CoP at § 482.13(e)(5), as well as at § 482.13(e)(8)(ii), and also propose to revise the provision to be in keeping with the language of the CHA regarding restraint and seclusion orders and licensed practitioners. Therefore, we are proposing that § 482.13(e)(5) would now read that the use of restraint or seclusion must be in accordance with the order of a physician or other licensed practitioner who is responsible for the care of the patient and authorized to order restraint or seclusion by hospital policy in accordance with State law. We are also proposing that § 482.13(e)(8)(ii) would state that, after 24 hours, before writing a new order for the use of restraint or seclusion for the management of violent or self-destructive behavior, a physician or other licensed practitioner who is responsible for the care of the patient and authorized to order restraint or seclusion by hospital policy in accordance with State law would have to see and assess the patient.

Other provisions in the current requirements regarding restraint and seclusion use the term "licensed independent practitioner", and we are proposing to revise these provisions as well. Section 482.13(e)(10), (e)(11), (e)(12)(i)(A), (e)(14), and (g)(4)(ii) all contain the term "licensed independent practitioner." Therefore, we are proposing to change the term from "licensed independent practitioner" to simply "licensed practitioner." We are also proposing to remove the term "physician assistant" from the current provisions at § 482.13(e)(12)(i)(B) and (e)(14) because we believe its use in these instances distinguishes the role of PAs from other licensed practitioners (such as APRNs) in ways that are confusing and that restrict the ability of hospitals to utilize PAs to the extent of their educational preparation and scope of practice. The current requirements severely limit a PA's scope of practice in ways that currently do not apply to an APRN practicing under the same circumstances. The AAPA has noted that by limiting a PA's scope of practice, the CoPs create a burden for hospitals, particularly small hospitals, and are contrary to state laws that allow PAs to practice to the full extent of their training and credentialing. PAs are trained on a medical model that is similar in content, if not duration, to that of physicians. Further, PA training and education is comparable in many ways to that of APRNs and in some ways, more extensive. Therefore, we believe that PAs, like APRNs and physicians, should not have to undergo additional training so that they can order restraint and seclusion. Therefore, we are proposing to remove PAs from the two provisions noted above.

3. Patient Access to Medical Records

On December 8, 2006, CMS published final regulations which established requirements for patient's rights in hospitals, and which included requirements for the confidentiality of patient records at § 482.13(d) (71 FR 71426). Specifically, § 482.13(d)(2) states that a patient has the right to access information contained in his or her clinical records within a reasonable time frame and that the hospital must not frustrate the legitimate efforts of individuals to gain access to their own medical records and must actively seek to meet these requests as quickly as its record keeping system permits. However, the requirements as they are currently written do not take into account that medical records may be maintained electronically, nor do the requirements acknowledge that a patient has the right to access these medical records in an electronic format. Ideally, the patient should be able to access their medical records in a form or format requested by the patient, whether electronically or in a hard copy format. Therefore, we are proposing to clarify the requirement at § 482.13(d)(2) to state that the patient has the right to access their medical records, including current medical records, upon an oral or written request, in the form and format requested by the individual, if it is readily producible in such form and format (including in an electronic form or format when such medical records are maintained electronically); or, if not, in a readable hard copy form or such other form and format as agreed to by the facility and the individual, within a reasonable time frame. OCR recently issued an FAQ document about medical records access clarifying that the requirement to send medical records to the individual is within 30 days (or 60 days if an extension is applicable) after receiving the request, "however, in most cases, it is expected that the use of technology will enable the covered entity to fulfill the individual's request in far fewer than 30 days." (*http://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/#newlyreleasedfaqs*). Individuals who have not been provided with their medical records within the 30-day timeframe required by HIPAA or who experience other difficulties accessing their medical records can file a complaint with OCR at: *http://www.hhs.gov/hipaa/filing-a-complaint/index.html.*

B. Quality Assessment and Performance Improvement (QAPI) Program (§ 482.21)

On January 24, 2003, CMS published a final rule in the **Federal Register** entitled "Medicare and Medicaid Programs; Hospital Conditions of Participation: Quality assessment and performance improvement (QAPI)" (68 FR 3435). The QAPI rule set a minimum requirement that each hospital participating in the Medicare program systematically examine the quality of its services and implement specific improvement projects on an ongoing basis. As a result of the QAPI rule, as well as other efforts and advancements in the delivery of healthcare, hospitals have made progress toward delivering safer, high-quality care.

The 2003 QAPI CoP final rule provided a framework to implement Department of Health and Human Services initiatives designed to help distinguish and avoid mistakes in the healthcare delivery system. The existing QAPI CoP requires each hospital to:

- Develop, implement, maintain, and evaluate its own QAPI program;
- Establish a QAPI program that reflects the complexity of its organization and services;
- Establish a QAPI program that involves all hospital departments and services and focuses on improving health outcomes and preventing and reducing medical errors; and
- Maintain and demonstrate evidence of its QAPI program for review by CMS.

We are proposing a minor change to the program data requirements at § 482.21(b). Currently, we require that hospitals incorporate quality indicator data including patient care data and other relevant data (for example, information submitted to, or received from, the hospital's Quality Improvement Organization) into their QAPI programs. We propose to update this requirement to reflect and capitalize on the wealth of important quality data available to hospitals through several quality data reporting programs. Specifically, we propose to require that the hospital QAPI program incorporate quality indicator data including patient care data submitted to or received from quality reporting and quality performance programs, including but not limited to data related to hospital readmissions and hospital-acquired conditions. Most hospitals collect and analyze data for several quality reporting and quality performance programs, such as the Hospital Inpatient Quality Reporting program, the Hospital Value-Based Purchasing Program, the Hospital-Acquired Condition Reduction Program, the Medicare and Medicaid Electronic Health Record Incentive Programs, and the Hospital Outpatient Quality Reporting program. Since a hospital is already collecting and reporting quality measures data for these programs, we believe that it is efficient and cost-effective for a hospital to include at least some of these data in its QAPI program. The data are used to calculate measures, which are generally endorsed by the National Quality Forum (NQF). We believe the resulting data are a valuable resource to hospitals that should be used in hospital QAPI programs.

While we are not proposing to require that hospitals develop and implement information technology (IT) systems as part of their QAPI program, we encourage hospitals to use IT systems, including systems to exchange health information with other providers, that are designed to improve patient safety and quality of care. In addition, we believe that those facilities that are electronically capturing information should be doing so using certified health IT that will enable real time electronic exchange with other providers. By using certified health IT, facilities can ensure that they are transmitting interoperable data that can be used by other settings, supporting a more robust care coordination and higher quality of care for patients.

C. Nursing Services (§ 482.23)

As a result of our internal review of the CoPs for nursing services, we recognized that some of our requirements might be ambiguous and confusing due to unnecessary distinctions between inpatient and outpatient services, or might fail to account for the variety of ways through which a hospital might meet its nurse staffing requirements. We propose to make revisions to the nursing services CoP to improve clarity. Specifically, we propose to revise § 482.23(b), which currently states that there must be supervisory and staff personnel for each department or nursing unit to ensure, when needed, the immediate availability of a registered nurse for bedside care of any patient. We propose to delete the term "bedside," which might imply only inpatient services to some readers. The nursing service must ensure that patient needs are met by ongoing assessments of patients' needs and must provide nursing staff to meet those needs regardless of whether the patient is an inpatient or an outpatient. There must be sufficient numbers, and types of supervisory and staff nursing personnel to respond to the appropriate nursing needs and care of the patient population of each department or nursing unit. When needed, a registered nurse must be available to care for any patient. We understand that the term "immediate availability" has been interpreted to mean physically present on the unit or in the department. We further understand that there are some outpatient services where it might not be necessary to have a registered nurse physically present. For example, while it is clearly necessary to have an RN present in an outpatient ambulatory surgery recovery unit, it might not be necessary to have an RN on-site at an off-campus MRI facility at § 482.23(b)(7). We propose to allow a hospital to establish a policy that would specify which, if any, outpatient departments would not be required to have an RN physically present as well as the alternative staffing plans that would be established under such a policy. We would require such a policy to take into account factors such as the services delivered, the acuity of patients typically served by the facility, and the established standards of practice for such services. In addition, we would propose that the policy must be approved by the medical staff and be reviewed at least once every three years. We welcome comments on the need for, the risks of establishing, and the appropriate criteria we should require for such an exception.

We also propose to clarify in paragraph (b)(4) (which currently requires that the hospital must ensure that the nursing staff develops, and keeps current, a nursing care plan for each patient and that the plan may be part of an interdisciplinary care plan) that while a nursing care plan is needed for every patient, the care plan should reflect the needs of the patient and the nursing care to be provided to meet those needs. The care plan for a patient with complex medical needs and a longer anticipated hospitalization may be more extensive and detailed than the care plan for a patient with a less complex medical need expecting only a brief hospital stay. We expect that a nursing care plan would be initiated and implemented in a timely manner, include patient goals as part of the patient's nursing care assessment and, as appropriate, physiological and psychosocial factors (such as specific physical limitations and available support systems), physical and behavioral health comorbidities, and patient discharge planning. In addition, it should be consistent with the plan for the patient's medical care and demonstrate evidence of reassessment of the patient's nursing care needs, response(s) to nursing interventions, and, as needed, revisions to the plan.

Finally, we propose to revise paragraph (b)(6) (which currently states that non-employee licensed nurses working in the hospital must adhere to the policies and procedures of the hospital and that the director of nursing service must provide for the adequate supervision and evaluation of the clinical activities of non-employee nursing personnel) to clarify that *all* licensed nurses who provide services in the hospital must adhere to the policies and procedures of the hospital. In addition, the director of nursing service must provide for the adequate supervision and evaluation of the clinical activities of *all* nursing personnel (that is, all licensed nurses and any non-licensed personnel such as nurse aides, orderlies, or other nursing support personnel who are under the direction of the nursing service) which occur within the responsibility of the nursing service, regardless of the mechanism through which those personnel are obtained. We recognize that there are a variety of arrangements under which hospitals obtain the services of licensed nurses. Mechanisms may include direct employment, the use of contract or agency nurses, a leasing agreement, volunteer services or some other arrangement. No matter how the services of a licensed nurse are obtained, in order to ensure the health and safety of patients, all nurses must know and adhere to the policies and procedures of the hospital and there must be adequate supervision and evaluation of the clinical activities of all nursing personnel who provide services that occur within the responsibility of the nursing service. We would expect non-licensed personnel to be supervised by a licensed nurse.

In addition, we propose to delete inappropriate references to § 482.12(c) that are currently in paragraphs (c)(1) and (3). We discuss these technical corrections in detail below.

D. Medical Record Services (§ 482.24)

The Medicare hospital CoPs apply to services being provided to all patients, regardless of insurer, and to both inpatients and outpatients of a hospital. However, some of the regulatory language in the Medical Record Services CoP (§ 482.24) appears to apply to only inpatients, particularly with the use of terms such as "admission," "hospitalization," and "discharge." We are proposing to make changes to several of the provisions in this CoP so that the requirements are clearer regarding the distinctions between a patient's inpatient and outpatient status and the subtle differences between certain aspects of medical record documentation related to each status.

The current requirements at § 482.24(c) state that the content of the medical record must contain information to justify admission and continued hospitalization, support the diagnosis, and describe the patient's progress and response to medications and services. While we believe that these terms are appropriate for inpatients, they do not fully capture the specific documentation necessary for outpatients. For example, appropriate documentation for an outpatient would be a current progress note, often in the accepted standard of a SOAP (Subjective, Objective, Assessment, Plan) note. Therefore, we propose to revise the current regulatory language to require that the content of the medical record must contain information to justify all admissions and continued hospitalizations, support the diagnoses, describe the patient's progress and responses to medications and services, and document all inpatient stays and outpatient visits to reflect all services provided to the patient.

Similarly, we propose to revise § 482.24(c)(4)(ii) from the current requirement for documentation of "admitting diagnosis" to include "all diagnoses specific to each inpatient stay and outpatient visit," which would include specifying any admitting diagnoses. Within this same standard, we are proposing to update several terms to reflect more current terminology and standards of practice. Therefore, at § 482.24(c)(4)(iv), we propose to require that the content of the record include documentation of complications, hospital-acquired conditions, healthcare-associated infections, and adverse reactions to drugs and anesthesia. We also propose changes to § 482.24(c)(4)(vi) to add "progress notes . . . interventions, responses to interventions . . ." to the required documentation of "practitioners' orders" to emphasize the necessary documentation for both inpatients and outpatients. And we propose to add the phrase "to reflect all services provided to the patient," so that the entire provision would now read that the content of the record must contain all practitioners' progress notes and orders, nursing notes, reports of treatment, interventions, responses to interventions, medication records, radiology and laboratory reports, and vital signs and other information necessary to monitor the patient's condition and to reflect all services provided to the patient.

Continuing under this standard detailing the contents of the medical record, we propose to make revisions to the final two provisions under this standard. We propose to change § 482.24(c)(4)(vii) to require that all patient medical records must document discharge and transfer summaries with outcomes of all hospitalizations, disposition of cases, and provisions for follow-up care for all inpatient and outpatient visits to reflect the scope of all services received by the patient. We believe that these changes would clarify the importance of discharge summaries for patients being discharged home as well as the importance of transfer summaries for patients being transferred to post-acute care facilities such as nursing homes or inpatient rehabilitation facilities. In addition, we recognize the distinction between the services received by inpatients and those received by outpatients by proposing to include language that distinguishes between the inpatient and the outpatient experiences.

Finally, we emphasize the distinctions between discharges and transfers as well as between inpatients and outpatients by proposing to revise § 482.24(c)(4)(viii) so that the content of the medical record would contain final diagnoses with completion of medical records within 30 days following all inpatient stays, and within 7 days following all outpatient visits.

E. Infection Prevention and Control and Antibiotic Stewardship Programs (§ 482.42)

Background

CMS introduced Infection Control as a hospital CoP in 1986 amidst growing recognition that infections and communicable diseases were potentially exposing hospital patients to significant pain and risk, and driving up direct hospital charges (51 FR 22010, 22027). The regulation increased hospital accountability and sought to ensure that hospitals identify, prevent, control, investigate, and report infections and communicable diseases of patients and hospital personnel. The regulation also established a requirement for hospitals to keep a log to identify problems and for improvement to be made when problems were identified.

The Infection Control CoP has essentially remained unchanged in its regulatory form, notwithstanding a final rule published in May 2012, "Reform of Hospital and Critical Access Hospital Conditions of Participation" (77 FR 29034), which removed the obsolete and redundant requirement for hospitals to maintain infection control logs, since hospitals are already required to monitor infections and currently do so through various surveillance methods, including electronic systems. The final rule also made a technical change to the CoP and replaced the outdated term, "quality assurance program," with the more current term, "quality assessment and performance improvement program."

The Department of Health and Human Services is particularly concerned about HAIs, as they are a significant cause of morbidity and mortality in the United States. In 2011, there were an estimated 722,000 cases of HAIs in US hospitals with 75,000 inpatients with HAIs that died during that same time period (Magill SS, Edwards JR, Bamberg W et al. Multistate Point Prevalence Survey of Health Care-Associated Infections. New England Journal of Medicine 2014; 370:1198–208.) Additionally, HHS is concerned about the growing threat to patient safety posed by organisms that are resistant to antibiotics, referred to as "multi-drug resistant organisms (MDROs)." Options for treating patients with MDRO infections are very limited, resulting in increased mortality, as well as increased hospital lengths of stay and costs. In response, HHS launched an Action Plan in April 2013 toward the prevention and elimination of HAIs. (HHS. "HHS Action Plan to Prevent Healthcare-Associated Infections." Accessed 5 March 2014 *http://www.hhs.gov/ash/initiatives/hai/actionplan/index.html*.) The HHS Action Plan identifies policy changes, some addressed here in this proposed rule, in an effort to provide better, more efficient care.

We are proposing revisions to § 482.42 in an effort to further clarify existing requirements and update regulatory language to reflect state-of-the-art practices and terminology. We are also proposing revisions that would require a hospital to develop and maintain an antibiotic stewardship program as an effective means to improve hospital antibiotic-prescribing practices and curb patient risk for possibly deadly *Clostridium difficile infections* (CDIs), as well as other future, and potentially life-threatening, antibiotic-resistant infections. We would promote better alignment of a hospital's infection control and antibiotic stewardship efforts with nationally recognized guidelines and heighten the role and accountability of a hospital's governing body in program implementation and oversight. We believe that these changes, together, would promote a more patient-centered culture of safety focused on infection prevention and control as well as appropriate antibiotic use, while allowing hospitals the flexibility to align their programs with the guidelines best suited to them.

Summary of Changes to § 482.42

In its present form, the "Infection Control" CoP set forth at § 482.42 requires hospitals to provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. Hospitals are presently required to have a designated infection control officer, or officers, who are required to develop a system to identify, report, investigate and control infections and communicable diseases of patients and personnel. The hospital's CEO, medical staff, and director of nursing services are charged with ensuring that the problems identified by the infection control officer or officers are addressed in hospital training programs and their QAPI program. The CEO, medical staff, and director of nursing services are also responsible for the implementation of successful corrective action plans in affected problem areas.

At the outset, we propose a change to the title of this CoP to "Infection prevention and control and antibiotic stewardship programs." By adding the word "prevention" to the CoP name, our intent is to promote larger, cultural changes in hospitals such that prevention initiatives are recognized on balance with their current, traditional control efforts. And by adding "antibiotic stewardship" to the title, we would emphasize the important role that a hospital should play in combatting antimicrobial resistance through implementation of a robust stewardship program that follows nationally recognized guidelines for appropriate antibiotic use. Along with these changes, we propose to change the introductory paragraph to require that a hospital's infection prevention and control and antibiotic stewardship programs be active and hospital-wide for the surveillance, prevention, and control of HAIs and other infectious diseases, and for the optimization of antibiotic use through stewardship. We would also require that a program demonstrate adherence to nationally recognized infection prevention and control guidelines for reducing the transmission of infections, as well as best practices for improving antibiotic use, for reducing the development and transmission of HAIs and antibiotic-resistant organisms. While these particular changes are new to the regulatory text, it is worth noting that these requirements, with the exception of the new requirement for an antibiotic stewardship program, have been present in the Interpretive Guidelines for hospitals since 2008 (See A0747 at Appendix A—Survey Protocol, Regulations and Interpretive Guidelines for Hospitals, *http://cms.gov/manuals/Downloads/som107ap_a_hospitals.pdf*).

We also propose to introduce the term "surveillance" into the text of the regulation. The addition of this term, which is also already in use in CMS Interpretive Guidelines for hospitals, is being proposed to bring the regulation up to date by reflecting current terminology in the field. As has been described in the Interpretive Guidelines for this regulation, "surveillance" includes infection detection, data collection, and analysis, monitoring, and evaluation of preventive interventions. (See SOM, Appendix A—Survey Protocol, Regulations and Interpretive Guidelines for Hospitals, pp.361–362, *http://cms.gov/manuals/Downloads/som107ap_a_hospitals.pdf*.) Surveillance practices include sampling or other mechanisms to permit identifying and monitoring infections occurring throughout the hospitals various locations or departments. In accordance with proposed § 482.42(c)(2)(ii), the hospital would be required to document its surveillance activities. Such documentation would likely include the measures selected for monitoring, and collection of data and analysis methods. Just as we would for other parts of the hospital's infection prevention and control program, we would require surveillance activities to be conducted in accordance with nationally recognized infection control surveillance practices, such as the widely accepted CDC National Healthcare Safety Network (NHSN). In collaboration with the hospital's QAPI program, the hospital would be required to develop and implement appropriate infection prevention and control interventions to address issues identified through its detection activities. Hospitals are encouraged to have mechanisms in place for the early identification of patients with targeted MDROs prevalent in their hospital and community, and for the prevention of transmission of such MDROs. When ongoing transmission of targeted MDROs in the hospital is identified, the infection prevention and control program would use this event to identify potential breaches in infection control practice.

As has previously been suggested in Interpretive Guidance, surveillance could also include "automated surveillance" by way of analyzing useful information from infection control data through the systematic application of medical informatics and computer science technologies. (See also Wright, M. Automated Surveillance and Infection Control: Toward a better tomorrow. *Am J Infect Control* 2008; 36:S1–S5.) Automated surveillance includes, but is not limited to, either data mining (discovering patterns and relationships which can be used to classify and predict) or query-based data management (requires user input, but does not seek patterns independently). A variety of automated systems exist and include both commercial and hospital-designed systems which, at a minimum, integrate portions of the medical record with laboratory, admission, discharge, transfer, and treatment information.

We are also proposing a new requirement that hospitals demonstrate adherence to nationally recognized infection prevention and control guidelines, as well as best practices for improving antibiotic use, where applicable, for reducing the development and transmission of HAIs and antibiotic-resistant organisms. We realize that, in developing the patient health and safety requirements that are the hospital CoPs, particular attention must be paid to the ever-evolving nature of medicine and patient care. Moreover, a certain degree of latitude must be left in the requirements to allow for innovations in medical practice that improve the quality of care and move toward the reduction of medical errors and patient harm.

We are proposing to intentionally build flexibility into the regulation by proposing language that requires hospitals to demonstrate adherence to nationally recognized guidelines rather than any specific guideline or set of guidelines for infection prevention and control and for antibiotic stewardship. While the CDC guidelines represent one set, there are other sets of nationally recognized guidelines from which hospitals might choose, such as those established by SHEA and IDSA. We believe this approach would provide hospitals the flexibility they need to select and integrate those standards that best suit their individual infection prevention and control and antibiotic stewardship programs. We also believe this approach would allow hospitals the flexibility to adapt their policies and procedures in concert with any updates in the guidelines they have elected to follow.

§ 482.42(a) Standard: Infection Prevention and Control Program Organization and Policies

We propose substantive changes to § 482.42(a), which sets forth the standard on "Organization and policies." First, we propose a change in the title of this standard that would now read, "Infection prevention and control program organization and policies." Current requirements pertaining to an infection control officer or officers would be amended within § 482.42(a) and some would be moved to § 482.42(c)(2).

§ 482.42(a)(1) Infection Control Officer(s)

Specifically, at § 482.42(a)(1), we propose to require the hospital to appoint an infection preventionist(s)/infection control professional(s). Within this proposed change we are deleting the outdated term, "infection control officer," and replacing it with the more current and accurate terms, "infection preventionist/infection control professional." CDC has defined "infection control professional (ICP)" as "a person whose primary training is in either nursing, medical technology, microbiology, or epidemiology and who has acquired specialized training in infection control." In designating infection preventionists/ICPs, hospitals should ensure that the individuals so designated are qualified through education, training, experience, or certification (such as that offered by the Certification Board of Infection Control and Epidemiology Inc. (CBIC), or by the specialty boards in adult or pediatric infectious diseases offered for physicians by the American Board of Internal Medicine (for internists) and the American Board of Pediatrics (for pediatricians)). Infection preventionists/ICPs should maintain their qualifications through ongoing education and training, which can be demonstrated by participation in infection control courses, or in local and national meetings, organized by recognized professional societies, such as Association for Professionals in Infection Control and Epidemiology (APIC), Association of periOperative Registered Nurses (AORN), Society for Healthcare Epidemiology of America (SHEA), and the Infectious Diseases Society of America (IDSA).

We would also require hospitals to seek out and consider the recommendations of medical staff leadership and nursing leadership in making such appointments. The proposed requirement would be a subtle, but important, departure from the current requirement at § 482.42(a), which simply requires that an officer or officers be designated to implement and develop the program. We believe our proposed approach would require high-level hospital clinical leadership, such as those individuals responsible for the medical staff and for the nursing service, be involved in the process of selecting the infection preventionists/ICPs, and is in keeping with our aim of promoting a hospital-wide culture of safety and quality in which input across the hospital is solicited and acted upon.

While we are proposing a change to the qualifications for infection preventionists/ICPs, we wish to highlight that the other requirements for designating an individual or individuals would remain otherwise unchanged. A hospital can still designate one or more individuals to fulfill the responsibilities within an infection prevention and control program. In a setting with multiple infection preventionists/ICPs, we would expect them to work together as an integrated team. What is important is that the functions of an infection prevention and control program are covered; it is not necessary for all functions to rest with one individual.

§ 482.42(a)(2) Preventing and Controlling the Transmission of Infections Within the Hospital and Between the Hospital and Other Institutions and Settings

We have proposed language at § 482.42(a)(2) that would adjust the scope of the hospitals' prevention and control programs from its current focus on transmission of infections between "patients and personnel" by proposing a focus on "transmission of infection" in the broader sense. This change is intended to reflect the efforts hospitals must make to prevent and control infections not just between patients and personnel, but also between individuals across the entire hospital setting (for example, among patients, personnel, and visitors) as well as between the hospital and other healthcare institutions and settings and between patients and the healthcare environment. In the case of transmission of infections within the hospital, we would expect hospitals to consider the impact of their outpatient facilities on their inpatient units. We would expect hospitals to look to guidelines, such as those summarized by the CDC in its recent publication, "Guide to Infection Prevention for Outpatient Settings: Minimum Expectations for Safe Care." (CDC. "Guide to Infection Prevention for Outpatient Settings" Accessed 18 November 2015 *http://www.cdc.gov/HAI/settings/outpatient/outpatient-care-guidelines.html*).

We believe this section reflects current best practices that are in place in most hospitals. The reality is that patients move between settings with great frequency and carry organisms with them, hence it is imperative that hospitals approach multi-drug resistant organism control from the broader perspective in order to protect their patients and staff. A concrete example of this already being part of current practice is that hospitals are already required to track both hospital- and community-onset cases of CDI, because research has shown that community-onset cases of CDI can impact hospitals. Likewise, the role of the environment is being increasingly recognized as an important source of infections and this change simply reflects this data and best practices. There are many good examples of hospitals working on preventing the spread of infection between healthcare environments. This update also fits with the clarification that these CoPs apply to both a hospital's inpatient and outpatient locations.

§ 482.42(a)(3) Healthcare-Associated Infections (HAIs)

In this proposed rule, we are also expanding the focus on and the awareness of the sources of HAIs that a hospital must address through its infection prevention and control program. We believe this change is appropriate given the rise in HAIs related to inter-facility transfer of patients, as people move through the system and across the continuum of health care. Given the number of facilities through which a patient might travel, our proposal to increase the involvement of hospital infection prevention and control programs would facilitate communication across settings. The provision would also require the program to address any infection control issues identified by public health authorities. Hospitals could look to the HHS Action Plan to Prevent Healthcare-Associated Infections as a resource for identifying prominent HAIs. (HHS. "HHS Action Plan to Prevent Healthcare-Associated Infections." Accessed 3 August 2011 *http://www.hhs.gov/ash/initiatives/hai/actionplan/index.html*).

Hospitals could also find it helpful to refer to the list (which features several categories of HACs and includes specific types of HAIs) that CMS publishes annually in its FY 2016 Inpatient Prospective Payment System final rule (80 FR 49325), in accordance with section 5001(c) of the Deficit Reduction Act (DRA) of 2005.

§ 482.42(a)(4) Scope and Complexity

We also propose to add a requirement at § 482.42(a)(4) to clarify that we would expect hospitals to develop and manage an infection prevention and control program that "reflects the scope and complexity of the hospital services provided." For example, a hospital that offers surgical services (contrasted with a hospital that does not offer surgical services) would be expected to have an infection prevention and control program that addresses infection issues specific to the surgical patient. Also, the CDC's Healthcare Infection Control Practices Advisory Committee (HICPAC), as well as professional infection control organizations such as APIC and SHEA, publish studies and recommendations on resource allocation that hospitals might find useful.

§ 482.42(b) Standard: Antibiotic Stewardship Program Organization and Policies

We propose a new standard at § 482.42(b) titled, "Antibiotic stewardship program organization and policies," in order to require hospitals to have policies and procedures for, and to demonstrate evidence of, an active and hospital-wide antibiotic stewardship program. Antibiotic stewardship, as an area of infection control, has long been recognized as one of the special challenges that hospitals must meet in order to address the problems of multidrug-resistant organisms and CDIs in hospitals.

As part of the antibiotic stewardship program, we propose that hospitals would be required to improve their internal coordination among all components responsible for antibiotic use and reducing the development of resistance, including, but not limited to, the infection prevention and control program, the QAPI program, the medical staff, nursing services, and pharmacy services. We also propose a requirement for hospitals to promote evidence-based use of antibiotics, and to reduce the incidence of adverse consequences of inappropriate antibiotic use including, but not limited to, CDIs and growth of antibiotic resistance in the hospital overall. CMS believes that the proposed requirement for a hospital to implement and maintain an active and hospital-wide antibiotic stewardship program will prove to be an effective means to improve hospital antibiotic-prescribing practices and thereby curb patient risk for potentially life-threatening, antibiotic-resistant infections, including CDI. We also believe that a robust antibiotic stewardship program that is coordinated with the hospital's overall infection prevention and control program might provide a synergistic approach to addressing HAIs and antibiotic resistance. In a November 2013 report entitled "Appropriate Use of Medical Resources," the American Hospital Association lists antibiotic stewardship as one of the top five ways that hospitals can improve the use of their medical resources (Combes J.R. and Arespacochaga E., Appropriate Use of Medical Resources. American Hospital Association's Physician Leadership Forum, Chicago, IL. November 2013.).

Further supporting this call for hospital AS programs, CDC recently issued a detailed study through its Morbidity and Mortality Weekly Report (MMWR) released March 7, 2014 that found that antibiotic prescribing for inpatients is common, and that there is ample opportunity to improve use and patient safety by reducing incorrect and inappropriate antibiotic prescribing (*http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6309a4.htm?s_cid=mm6309a4_w* Accessed March 14, 2014). Prior to the release of this study on *MMWR,* CDC also issued early releases of this information on both its *Vital Signs* and *Get Smart for Healthcare* sites (*http://www.cdc.gov/vitalsigns/antibiotic-prescribing-practices/index.html; http://www.cdc.gov/getsmart/healthcare/* both accessed March 4, 2014.). According to these reports:

- About one-third of the time, in prescribing the critical and common drug vancomycin and in the treatment of common urinary tract infections, patients were given antibiotics without proper testing or evaluation, were given drugs for too long, or were given antibiotics when evidence suggested they were not needed at all.
- Clinicians in some hospitals prescribed three times as many antibiotics as clinicians in other hospitals, even though patients were receiving care in similar areas of each hospital. This difference suggests the need to improve prescribing practices.
- A 30 percent reduction in the broad-spectrum antibiotics most likely to cause CDI could reduce these deadly infections by 26 percent.

Additionally and prior to CMS drafting this proposed rule, the Infectious Disease Society of America (IDSA) and SHEA wrote a letter to CMS (dated March 4, 2014) detailing "the supportive evidence and rationale to adopt Antimicrobial Stewardship (AS) as a Medicare Condition of Participation (CoP)." In the letter, IDSA and SHEA define "antibiotic stewardship" as "the optimal use of antimicrobials to achieve the best clinical outcomes while minimizing adverse events, limiting factors that lead to antimicrobial resistance, and reducing excessive costs attributable to suboptimal antimicrobial use." They presented extensive evidence for the value that antibiotic stewardship programs could hold for patients and hospitals as well as for the overall healthcare system. The letter cited numerous studies that demonstrated that "AS programs provide significant cost savings or at least offset the cost of AS programs through reduction in drug acquisition costs, correlating with improved clinical outcomes." (*http://www.shea-online.org/View/ArticleId/265/SHEA-IDSA-letter-to-CMS-advancing-Antimicrobial-Stewardship-as-a-Condition-of-Participation.aspx*)

As is the case for infection prevention and control programs, we believe there should be flexibility in how antibiotic stewardship programs are implemented. Guidance on best practices for implementing antibiotic stewardship programs is available from several organizations, including IDSA, SHEA, the American Society for Health System Pharmacists, and CDC.[1]

Taken as a whole, the studies and the supportive evidence show overwhelmingly that hospital AS programs can be implemented in all hospitals and would, as IDSA and SHEA state in their letter, "better patient care, improve outcomes, and lower the healthcare costs associated with antibiotic overuse (that is, expenditures on antibiotics) as well as costs associated with infections and antimicrobial resistance." Based on this evidence, we are proposing the requirement for hospitals to include AS programs as integral parts of their overall infection prevention and control efforts.

§ 482.42(b)(1) Leader of the Antibiotic Stewardship Program

We propose a new provision at § 482.42(b)(1) that would require the hospital, with the recommendations of the medical staff leadership and pharmacy leadership, to designate an individual, who is qualified through education, training, or experience in infectious diseases and/or antibiotic stewardship, as the leader of the antibiotic stewardship program. We believe that the importance of the antibiotic stewardship program to the hospital is great enough to warrant the leadership of a qualified individual, who would serve as the counterpart to his or her colleague(s) leading the hospital's overall infection prevention and control program. The skills needed to lead each program are different. Infection prevention programs are often led by nursing staff who do not prescribe antibiotics. Antibiotic stewardship programs are led by physicians and pharmacists who have direct knowledge and experience with antibiotic prescribing. However, the ultimate goals of the programs on preventing healthcare complications like CDI and resistance are common and hence there is the need for collaboration. We believe that it is important for the overall success of both programs (and for the hospital) that each has its own distinct structure and leadership responsibilities, but that each works in close collaboration with the other.

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[1] "Antimicrobial Agent Use". *http://www.idsociety.org/Antimicrobial_Agents/*. "Antimicrobial Stewardship: Guidelines". *http://www.shea-online.org/PriorityTopics/AntimicrobialStewardship/Guidelines.aspx*. "Antimicrobial Stewardship Resources". *http://www.ashp.org/menu/PracticePolicy/ResourceCenters/Inpatient-Care-Practitioners/Antimicrobial-Stewardship*. "Core Elements of Hospital Antibiotic Stewardship Programs" *http://www.cdc.gov/getsmart/healthcare/implementation/core-elements.html*.

§ 482.42(b)(2)(i), (ii), and (iii) Meeting the Goals of the Antibiotic Stewardship Program

Proposed requirements at § 482.42(b) would require the hospital to ensure that the following goals for an AS program are met: (1) Demonstrate coordination among all components of the hospital responsible for antibiotic use and factors that lead to antimicrobial resistance, including, but not limited to, the infection prevention and control program, the QAPI program, the medical staff, nursing services, and pharmacy services; (2) document the evidence-based use of antibiotics in all departments and services of the hospital; and (3) demonstrate improvements, including sustained improvements, in proper antibiotic use, such as through reductions in CDI and antibiotic resistance in all departments and services of the hospital. We believe that these components are essential for a robust and effective AS program. After this rule is finalized, CMS will develop Interpretive Guidelines that will instruct surveyors on how to determine hospital compliance with these goals.

§ 482.42(b)(3) and (4) Meeting Nationally Recognized Guidelines; and Scope and Complexity

Three new provisions would require the hospital ensure that the AS program adheres to nationally recognized guidelines, as well as best practices, for improving antibiotic use, and, similar to the requirements proposed for the hospital's infection prevention and control program at § 482.42(a)(4), the hospital also ensures that the AS program reflects the scope and complexity of services offered.

§ 482.42(c) Leadership Responsibilities

We propose to revise the requirements currently at § 482.42(b), "Leadership responsibilities," by proposing a new standard at § 482.42(c) that would enhance the accountability of hospital leadership for the infection prevention and control and antibiotic stewardship programs as well as delineate the responsibilities for the leaders of the infection prevention and control program and the AS program respectively. We wish to promote a hospital-wide culture of safety and quality, and we are proposing these regulatory changes to introduce a catalyst at the leadership level. We believe these changes would result in the implementation of successful programs such as Executive Walk Rounds (EWRs), instituted by Brigham & Women's Hospital in Boston some years ago. The goals of these rounds (and others modeled on them) are to: Ensure safety is a high priority for senior leadership; increase staff awareness of safety issues; educate staff about patient safety concepts such as non-punitive reporting; and obtain information from staff about safety issues. We also propose to update the requirements by adopting a broader reference to "nursing leadership" rather than "the director of nursing services," which is used in the current regulation. In addition to consultation with nursing leadership, we would also require hospital governing body consultation with medical staff, pharmacy leadership, the infection preventionist(s)/infection control professional(s), and the leader of the antibiotic stewardship program. We believe these changes would provide hospitals with greater flexibility and open up the process and expand accountability and involvement at all levels.

§ 482.42(c)(1) The Governing Body

We propose requirements at § 482.42(c)(1) that provide greater specificity with respect to the responsibilities of hospital leadership at the governing body level. As previously set forth, we believe these changes are necessary to the hospital-wide culture of quality improvement we are promoting.

§ 482.42(c)(1)(i) Governing Body Responsibilities

In particular, we would require at § 482.42(c)(1)(i) that the governing body ensure that systems are in place and are operational for the tracking of all infection surveillance, prevention, and control, and antibiotic use activities, in order to demonstrate the implementation, success, and sustainability of such activities.

§ 482.42(c)(1)(ii) Governing Body Responsibilities (Cont.)

We are proposing at § 482.42(c)(1)(ii) that the governing body ensure that all HAIs and other infectious diseases identified by the infection prevention and control program as well as antibiotic use issues identified by the antibiotic stewardship program are addressed in collaboration with hospital QAPI leadership. As discussed, we believe that a closer, more streamlined connection between infection prevention and control and antibiotic stewardship programs with hospitals' QAPI programs will translate to better quality and healthier patients. Ultimately, better quality and healthier patients reduce burden and create efficiencies in health care overall.

§ 482.42(c)(2) The Infection Preventionists/Infection Control Professionals

At § 482.42(c)(2), we establish the responsibilities of the infection preventionist(s)/infection control professional(s) for the hospital's infection prevention and control program.

§ 482.42(c)(2)(i) The Infection Preventionists'/Infection Control Professionals' Responsibilities

We propose to add a requirement at § 482.42(c)(2)(i) that would make the infection preventionist(s)/infection control professional(s) responsible for the development and implementation of hospital-wide infection surveillance, prevention, and control policies and procedures that adhere to nationally recognized guidelines. Current CMS Interpretive Guidelines (SOM, Appendix A, p. 353) for hospitals already guide hospitals to follow nationally recognized infection control practices or guidelines. This proposed requirement notwithstanding, we recognize and appreciate that a hospital might wish to implement safety practices as part of an investigation aimed to improve or modify accepted standards of infection prevention and control practice, but which have not yet been established as national guidelines or even emerged from the traditional peer review process. We do not intend to discourage these investigational methodologies or approaches. We would, however, expect to see the hospitals engaging in these sorts of innovative practices to also have an adequate program rooted in the traditional evidence-based model. There are ample recognized evidence-based approaches for hospitals to follow, and we believe our proposed requirement for hospitals to adhere to nationally recognized guidelines would not impede any hospital's ability to otherwise make progress in infection prevention and control.

Research tells us that healthcare-associated infections are one of the most preventable causes of mortality in the United States (U.S.). For example, in a seminal study on central line-associated bloodstream infections (CLABSIs), known as the Michigan Keystone study, researchers demonstrated the profound impact that the use of checklists can have when applied to the medical field. The study demonstrated a 66 percent drop in central line-associated bloodstream infection rates, saving 1,500 lives and $100 million. [Pronovost P, Needham D, Berenholtz S, Sinopoli D, Chu H, Cosgrove S, *et al.* An intervention to decrease catheter-related bloodstream infections in the ICU. N Engl J Med. 2006; 355(25):2725–32.] The study demonstrated that it was possible for a diverse array of hospitals with a diverse array of patients to adopt the same bundled set of best practices, apply them consistently and in a hospital-wide team-like fashion, and produce a massive reduction in CLABSIs over a sustained period. Importantly, the study also touched off a change in hospital culture, and weakened a long-held belief in the medical community that infections were inevitable, not truly preventable, and simply a cost of being a patient in a hospital. Since publication of this initial study, researchers have gone on to demonstrate how the reduction of CLABSIs also translates to reductions in mortality and in length of stay. [Lipitz-Snyderman A, Steinwachs D, Needham D, Colantuoni E, Morlock L, Pronovost P, Impact of a statewide intensive care unit quality improvement initiative on hospital mortality and length of stay: retrospective comparative analysis. BMJ 2011; 342:d219.] Reductions have been demonstrated for other HAIs as well, but much more remains to be done.

Finally, by requiring hospitals to adhere to "nationally recognized guidelines," we aim to provide hospitals with a broad array of options and a large degree of flexibility. We recognize the potential for hospitals to become encumbered by competing initiatives and requirements whereby they are required to collect different data or implement varied solutions for the same problem. For this reason, we have drafted broad requirements to afford hospitals the flexibility to adopt the approaches which best fit their infection prevention and control needs.

§ 482.42(c)(2)(ii), (iii), (iv), (v), and (vi) The Infection Preventionists'/Infection Control Professionals' Responsibilities (Cont.)

At § 482.42(c)(2)(ii), we propose to make the infection preventionist(s)/infection control professional(s) responsible for all documentation, written or electronic, of the prevention and control program, and its surveillance, prevention, and control activities. As used in this context, the word "documentation" would encompass both collecting and maintaining pertinent information in a systematic fashion.

At § 482.42(c)(2)(iii), we would require that the infection preventionist(s)/infection control professional(s) communicate and collaborate with the hospital's QAPI program on all infection prevention and control issues. By the word "issues" we mean all concerns, including ones which are emerging and ones which are already problematic. We believe this approach will foster and enhance a proactive culture around hospitals' infection prevention and control programs.

At § 482.42(c)(2)(iv), we propose that the infection preventionist(s)/infection control professional(s) take a direct role in the competency-based training and education of hospital personnel and staff, including medical staff, and, as applicable, personnel providing contracted services in the hospital, on the practical applications of infection prevention and control guidelines, policies, and procedures. We believe that this proposed revision is more specific and more in keeping with current standards of practice in hospitals than the current provision at § 482.42(b)(1) that requires a hospital to ensure that its training programs address problems identified by the infection control officer or officers.

At § 482.42(c)(2)(v), we propose that the infection preventionist(s)/infection control professional(s) be responsible for preventing and controlling HAIs, including auditing of adherence to infection prevention and control policies and procedures by hospital personnel. We believe the infection preventionist(s)/infection control professional(s) would find a comprehensive and timely resource in the HHS Action Plan to Prevent Healthcare-Associated Infections (HHS. "HHS Action Plan to Prevent Healthcare-Associated Infections." Accessed 3 August 2011 *http://www.hhs.gov/ash/initiatives/hai/actionplan/index.html.*).

At § 482.42(c)(2)(vi), we propose that the infection preventionist(s)/infection control professional(s) be responsible for communication and collaboration with the antibiotic stewardship program. Based on the evidence provided by CDC, IDSA, SHEA, and others, we believe that collaboration between the hospital's infection prevention and control and antibiotic stewardship programs will provide the optimal approach to reducing HAIs and antibiotic resistance.

§ 482.42(c)(3) The Antibiotic Stewardship Program Leader's Responsibilities

Finally in this CoP, at § 482.42(c)(3), we propose new requirements for the hospital's designated antibiotic stewardship program leader, similar to the responsibilities we have proposed for the hospital's designated infection preventionist(s)/infection control professional(s). Based on the evidence, we believe that a hospital antibiotic stewardship program is the most effective means for ensuring appropriate antibiotic use and for reducing HAIs and antibiotic resistance, including deadly CDI. We also believe that such a program would require a dedicated and expert leader responsible and accountable for its success. Therefore, those responsibilities would be:

- The development and implementation of a hospital-wide antibiotic stewardship program, based on nationally recognized guidelines, to monitor and improve the use of antibiotics;
- All documentation, written or electronic, of antibiotic stewardship program activities;
- Communication and collaboration with medical staff, nursing, and pharmacy leadership, as well as the hospital's infection prevention and control and QAPI programs, on antibiotic use issues; and
- The competency-based training and education of hospital personnel and staff, including medical staff, and, as applicable, personnel providing contracted services in the hospital, on the practical applications of antibiotic stewardship guidelines, policies, and procedures.

F. Technical Corrections

Technical Amendments to § 482.27(b)(7)(ii) and (b)(11)

In the final rule "Medicare and Medicaid Programs; Hospital Conditions of Participation: Laboratory Services," amending 42 CFR 482.27 (72 FR 48562, 48573, Aug. 24, 2007), we stated that HCV notification requirements for donors tested before February 20, 2008, would expire on August 24, 2015, in accordance with 21 CFR 610.48.

Since the notification requirement period has expired, we propose to remove § 482.27(b)(11), "Applicability" and the corresponding requirements set out at § 482.27(b)(7)(ii).

Corrected Reference in § 482.58

In our review of the Hospital Conditions of Participation, we found an incorrect cross-reference at § 482.58(b)(6), which currently reads

"Discharge planning (§ 483.20(e))". Section 483.20(e) addresses coordination of the preadmission screening and resident review program, not discharge planning. SNF requirements for discharge plans are set out at § 483.20(l). Therefore, we propose to correct the reference to read "Discharge summary (§ 483.20(l))".

Removal of Inappropriate References to § 482.12(c)(1)

Upon our review of the Hospital CoPs for this proposed rule, we discovered that there are several provisions that incorrectly reference § 482.12(c)(1), which lists the types of physicians and applies only to patients who are Medicare beneficiaries. Section 482.12(c) states that the governing body of the hospital must ensure that every Medicare patient is under the care of one of the following practitioners:

- A doctor of medicine or osteopathy;
- A doctor of dental surgery or dental medicine who is legally authorized to practice dentistry by the State and who is acting within the scope of his or her license;
- A doctor of podiatric medicine, but only with respect to functions which he or she is legally authorized by the State to perform;
- A doctor of optometry who is legally authorized to practice optometry by the State in which he or she practices;
- A chiropractor who is licensed by the State or legally authorized to perform the services of a chiropractor, but only with respect to treatment by means of manual manipulation of the spine to correct a subluxation demonstrated by x-ray to exist; and
- A clinical psychologist as defined in § 410.71, but only with respect to clinical psychologist services as defined in § 410.71 and only to the extent permitted by State law.

The reference of this "Medicare beneficiary-only" requirement in other provisions of the CoPs inappropriately links it to *all* patients and not Medicare beneficiaries exclusively. In fact, the Act at section 1861(e)(4) states that "every patient with respect to whom payment may be made under this title must be under the care of a physician except that a patient receiving qualified psychologist services (as defined in subsection (ii)) may be under the care of a clinical psychologist with respect to such services to the extent permitted under State law." In accordance with that provision, we have chosen to apply § 482.12(c) to Medicare patients. With the exception of a few provisions in the CoPs such as those directly related to § 482.12(c) described here, the remainder of the CoPs apply to all patients, regardless of payment source, and not just Medicare beneficiaries. For example, the Nursing Services CoP, at § 482.23(c)(1), requires that all drugs and biologicals must be prepared and administered in accordance with Federal and State laws, the orders of the practitioner or practitioners responsible for the patient's care as specified under § 482.12(c), and accepted standards of practice. Since the CoPs clearly allow hospitals to determine which categories of practitioners would be responsible for the care of other patients, outside the narrow Medicare beneficiary restrictions of § 482.12(c), this reference is inappropriate and unnecessarily restrictive of hospitals and their medical staffs to make these determinations based on State law and practitioner scope of practice.

In order to clarify that these provisions apply to all patients and not only Medicare beneficiaries, in this rule we are proposing to delete any inappropriate references to § 482.12(c). Therefore, we propose to delete references to § 482.12(c) found in the following provisions: § 482.13(e)(5), (e)(8)(ii), (e)(14), and (g)(4)(ii) in the Patients' Rights CoP; and § 482.23(c)(1) and (3) in the Nursing Services CoP. With respect to all of these provisions, the reference to services provided under the order of a physician or other practitioner would still apply.

G. Critical Access Hospitals

We have identified several priority areas in the CoPs for CAHs (42 CFR part 485, subpart F) for updates and revisions. We believe that these proposed regulations would benefit the quality of care provided with a positive impact on patient satisfaction, length of stay, and, ultimately, cost per patient. Additionally, without potentially jeopardizing the quality of healthcare in rural areas, we have proposed the following changes to the CAH CoPs considering the resource restrictions of remote and frontier CAHs.

1. Organizational Structure (§ 485.627(b))

The CoP at § 485.627 provides that the CAH has a governing body or an individual that assumes full legal responsibility for determining, implementing and monitoring policies governing the CAH's total operation and for ensuring that those policies are administered so as to provide quality health care in a safe environment. The current standard at § 485.627(b) requires the disclosure of names and addresses of the person(s) principally responsible for the operation and medical direction of the CAH in addition to the disclosure of individuals with a controlling interest in the CAH or in any subcontractor in which the CAH directly or indirectly has a 5 percent or more ownership interest. Since the disclosure of persons having ownership, financial, or control interest is required via the provider enrollment process as discussed at § 420.206, we do not believe that it is appropriate to repeat the requirement under the health and safety regulations. Therefore, we are proposing to delete the same disclosure requirement at § 485.627(b)(1).

2. Periodic Review of Clinical Privileges and Performance (§ 485.631(d)(1) Through (2))

The current CoP at § 485.641 requires a CAH to have an agreement with respect to credentialing and quality assurance with a hospital that is a member of the rural health network (when applicable) as defined in § 485.603; one Quality Improvement Organization (QIO) or equivalent entity; or one other appropriate and qualified entity identified in the State rural health care plan to evaluate the quality and appropriateness of the diagnosis and treatment furnished by doctors of medicine (MDs) or osteopathy (DOs) at the CAH. In addition, the MD and DO (on staff or under contract with the CAH) must evaluate the quality and appropriateness of the diagnosis and treatment furnished by the CAH's non-physician practitioners.

We are proposing to change the current CoP at § 485.641 to reflect the current QAPI format used in hospitals. As such, we propose to retain the requirements under paragraphs § 485.641(b)(3) through (4), that are currently found under the "Periodic evaluation and quality assurance" CoP, and relocate them under a new standard under the "Staffing and staff responsibilities" CoP at § 485.631. We are not changing these requirements and believe that they are still appropriate for the CAH regulations. Since the current CoP under § 485.631 discusses staffing requirements and responsibilities, we believe that relocating the requirement under a new standard, entitled "Periodic Review of Clinical Privileges and Performance" (§ 485.631(d)) is a more appropriate placement for the current provisions requiring a CAH to evaluate the quality of care provided by their nurse practitioners, clinical nurse specialists, certified nurse midwives, physician assistants, doctors of medicine, or doctors of osteopathy.

3. Provision of Services (§ 485.635(a)(3)(vii))

We currently require CAHs at § 485.635(a)(3)(vii) to have procedures that ensure that the nutritional needs of inpatients are met in accordance with recognized dietary practices and the orders of the practitioner responsible for the care of the patients and that the requirement of § 483.25(i) is met with respect to inpatients receiving post-hospital SNF care. This current requirement asserts that a therapeutic diet must be prescribed only by the practitioner or practitioners responsible for the care of the patient.

We finalized a change in the May 12, 2014 **Federal Register** (79 FR 27106) to the hospital requirement for Food and Dietetic services (§ 482.28) that all patient diets, including therapeutic diets, must be ordered by a practitioner responsible for the care of the patient, or by a qualified dietician or qualified nutrition professional as authorized by the medical staff and in accordance with State law governing dietitians and nutrition professionals. We are proposing a similar change for CAHs because we believe that these rural providers and beneficiaries would benefit from such a change. The responsibility for the care of the patient in a CAH has traditionally been the responsibility of the physician, more specifically the MD and DO, and the APRN and PA. We believe that a team-based approach that allows for professionals to practice in their area of expertise and to the fullest extent allowed by state law would be of great benefit to CAH patients. We further believe that patients in these traditionally underserved areas deserve the same standard of care as patients receive in better-served areas.

Based on feedback from the provider community, we have come to the conclusion that the regulatory language is too restrictive and lacks the reasonable flexibility to allow CAHs to permit registered dieticians (RDs) to order therapeutic diets for patients in accordance with State laws. Because some States elect not to use the regulatory term "registered" and choose instead to use the term "licensed" (or no modifying term at all), or because some States also recognize other nutrition professionals with equal or possibly more extensive qualifications, we propose to use the term "qualified dietitian." In those instances where we have used the most common abbreviation for dietitians, "RD," in this preamble, our intention is to include all qualified dietitians and any other clinically qualified nutrition professionals, regardless of the modifying term (or lack thereof), as long as each qualified dietitian or qualified nutrition professional meets the requirements of his or her respective State laws, regulations, or other appropriate professional standards.

Based on a review of the professional literature on this subject, we believe that RDs are the professionals who are best qualified to assess a patient's nutritional status and to design and implement a nutritional treatment plan in consultation with the patient's interdisciplinary care team. In order for patients to receive timely nutritional care, the RD must be viewed as an integral member of the CAH's interdisciplinary care team, one who, as the team's clinical nutrition expert, is responsible for a patient's nutritional diagnosis and treatment in light of the patient's medical diagnoses. Without the proposed regulatory changes allowing them to grant appropriate ordering privileges to RDs, CAHs would not be able to effectively realize the improved patient outcomes and overall cost savings that we believe would be possible with such changes. The literature also supports the conclusion that, in addition to providing safe patient care with improved outcomes, RDs with ordering privileges contribute to decreased patient lengths of stay and provide nutrition services more efficiently, resulting in lower costs for hospitals, including small and rural hospitals as well as CAHs. (Kinn TJ. Clinical order writing privileges. Support Line. 2011; 33; 4; 3–10). A 2010 retrospective cohort study of 1,965 patients at an academic medical center looked at the influence of the RD with ordering privileges on appropriate parenteral nutrition (PN) usage (Peterson SJ, Chen Y, Sullivan CA, et al. Assessing the influence of registered dietician order-writing privileges on parenteral nutrition use. J AM Diet Assoc. 2010; 110; 1702 1711). The study showed that inappropriate PN usage decreased from 482 patients to 240 patients during the pre- and post-ordering privileges periods, respectively. The data from this study also demonstrated a 20 percent cost savings in PN usage. Additionally, this proposed change might also help CAHs to realize other significant quality and patient safety improvements as well as savings. A 2008 study indicates that patients whose PN regimens were ordered by RDs have significantly fewer days of hyperglycemia (57 percent versus 23 percent) and electrolyte abnormalities (72 percent versus 39 percent) compared with patients whose PN regimens were ordered by physicians (Duffy JK, Gray RL, Roberts S, Glanzer SR, Longoria SL. Independent nutrition order writing by registered dieticians reduces complications associated with nutrition support [abstract]. J Am Diet Assoc. 2008; 108 (suppl 1):A9).

Physicians, APRNs, and PAs might lack the training and educational background to manage the sometimes complex nutritional needs of patients with the same degree of efficiency and skill as RDs who have benefited from curriculums that devote a significant number of educational hours to this area of medicine. The addition of ordering privileges enhances the ability that RDs already have to provide timely, cost-effective, and evidence-based nutrition services as the recognized nutrition experts on a hospital and a CAH interdisciplinary team and saves valuable time in the care and treatment of patients, time that is now often wasted as RDs must seek out physicians, APRNs, and PAs to write or co-sign dietary orders. A 2011 literature review discusses a number of additional studies that provide further evidence for the extensive training and education in nutrition that RDs experience as opposed to the limited exposure that physicians receive to this area of medicine, along with several other studies supporting the cost-effectiveness and positive patient outcomes that hospitals might achieve by granting RDs ordering privileges (Kinn TJ. Clinical order writing privileges. Support Line. 2011; 33; 4; 3–10).

In order for patients to have access to the timely nutritional care that can be provided by RDs, especially in rural and remote areas, a CAH must have the regulatory flexibility either to appoint RDs to the medical staff and grant them specific nutritional ordering privileges or to authorize the ordering privileges without appointment to the medical staff. In either instance, medical staff oversight of RDs and their ordering privileges would be ensured. Therefore, we are proposing revisions to § 485.635(a)(3)(vii) that would require that individual patient nutritional needs be met in accordance with recognized dietary practices and the orders of the practitioner responsible for the care of the patients, or by a qualified dietician or qualified nutrition professional as authorized by the medical staff in accordance with State law governing dietitians and nutrition professionals. In addition, we are also proposing that the requirement of § 483.25(i) is met with respect to inpatients receiving post hospital SNF care. Evidence shows that if CAHs choose to grant these specific ordering privileges to RDs they might achieve a higher quality of care for their patients by allowing these professionals to fully and efficiently function as important members of the patient care team in the role for which they were trained. As a result, it is expected that CAHs would realize cost savings in many of the areas affected by nutritional care. We welcome public comments on this proposed change.

Provision of Services (§ 485.635(g))

At § 485.635(g) we propose a new requirement regarding non-discriminatory behavior. As discussed in this preamble at § 482.13 with regard to hospitals, we are aware that discriminatory behavior by healthcare providers can create barriers to care and result in adverse outcomes for patients. The fear of discrimination alone can limit the extent to which a person accesses health services.

While the CAH CoPs at § 485.608 require that a CAH be in compliance with applicable Federal laws related to the health and safety of patients, there is currently no explicit prohibition of discrimination in the CAH CoPs. We propose to require that a CAH not discriminate on the basis of race, color, religion, national origin, sex (including gender identity), sexual orientation, age, or disability. We are proposing these requirements to ensure nondiscrimination as required by Section 1557 of the Affordable Care Act, which prohibits health programs and activities that receive federal financial assistance, such as Medicare and Medicaid, from excluding or denying beneficiaries participation based on their race, color, national origin, sex (including gender identity), age, or disability. As discussed in section II.A.1 of this proposed rule, we believe that discrimination based on a patient's religion or sexual orientation can potentially lead to a denial of services or inadequate care, which is detrimental to the patient's health and safety. We are therefore also proposing to establish explicit requirements that a CAH not discriminate on the basis of religion or sexual orientation and that a CAH establish and implement a written policy prohibiting discrimination on the basis of religion or sexual orientation. We are doing so under the statutory authority of Section 1820(e)(3) of the Act, which sets forth the conditions for designating certain hospitals as CAHs.

We further propose that CAHs establish and implement a written policy prohibiting discrimination. As noted in our explanation of the proposed policy applicable to hospitals, freedom from discrimination correlates with improved health outcomes. The same would be true of CAHs.

CAHs would be required to inform each patient (including the patient's support person, where appropriate) of the right to be free from discrimination in a language that the patient can understand. In addition, we propose to require that the CAH inform the patient and/or representative, and/or support person, on how he or she can seek assistance if they encounter discrimination.

4. Infection Prevention and Control and Antibiotic Stewardship Programs (§ 485.640)

CMS retained the former Essential Access Community Hospitals and Rural Primary Care Hospitals (EACH/RPCH) Infection Control regulation for CAHs in the 1997 **Federal Register** (62 FR 46008, August 29, 1997) in the subsequent CoP requirements at § 485.635(a)(3)(vi) and at § 485.641(b)(2). The infection control requirements for CAHs have remained unchanged since 1997. We are proposing to remove the current requirements at §§ 485.635(a)(3)(vi) and 485.641(b)(2) and are adding a new infection prevention and control and antibiotic stewardship CoP for CAHs because the existing standards for infection control do not reflect the current nationally recognized standards of practice for the prevention and elimination of healthcare-associated infections and for the appropriate use of antibiotics.

We discuss at length in this preamble at § 482.42 the issues and concerns regarding infection control, healthcare-associated infections, antibiotic overuse, and the industry recommendations for addressing these serious and growing problems. Therefore, we will not have a lengthy discussion of the background and rationale in this section. Additionally, note that a March 6, 2014 article of the Health Leaders Media entitled, "Size Matters in Antibiotic Overuse," discusses the variation in prescribing practices among hospitals (Cheryl Clark, Health Leaders Media Council Quality e-Newsletter, March 6, 2014). Some hospitals are prone to give antibiotics as much as three times more often than other hospitals, despite a similar patient mix. The article features research results authored by clinicians at a large hospital system with more than 80 hospitals in 21 states. The research showed that antibiotic prescribing practices at 69 hospitals had significant variations in the use of antibiotics across the 69 hospitals. They found that the lower the "case mix index," or severity of illness at a particular hospital, and the smaller the hospital in terms of number of beds, the more antibiotics were used on patients and the more money was spent on the cost of those drugs. The report discussed that one possible cause could be that hospitals located in smaller, perhaps rural areas, or CAHs might lack access to rapid, sophisticated lab equipment to identify the type of microbes their patients might have.

The report also theorized that it was likely that smaller hospitals do not have as robust of an antimicrobial stewardship program as larger hospitals. The research documented several factors associated with higher antibiotic use at smaller or rural hospitals:

- Lack of awareness on judicious antibiotic use;
- Lack of teamwork among pharmacists and physicians;
- Lack of a formal process on appropriate indications for broad spectrum agent use;
- Lack of prospective monitoring on continuation of broad spectrum agent use, such as de-escalation of use after negative result from culture and sensitivity testing; and
- Lack of resistance trend monitoring and making appropriate process changes to reduce resistance.

We are therefore proposing that each CAH has facility-wide infection prevention and control and antibiotic stewardship programs. The programs would be coordinated with the CAH QAPI program, for the surveillance, prevention, and control of HAIs and other infectious diseases and for the optimization of antibiotic use through stewardship. We are emphasizing the importance of antibiotic stewardship because it could play a vital role in a CAH's successful efforts in combatting antimicrobial resistance. The programs would demonstrate adherence to nationally recognized infection control guidelines, where applicable, for reducing the transmission of infections, as well as best practices for improving antibiotic use and reducing the development and transmission of HAIs and antibiotic-resistant organisms. We believe that this approach would provide CAHs the flexibility they need to select and integrate standards and best practices which are best suited to their individual infection prevention and control program.

§ 485.640(a)(1) and (2) Infection Control Officer(s); and Prevention and Control of Infections Within the CAH and Between the CAH and Other Healthcare Settings

At § 485.640(a)(1) we propose that the CAH ensure that an individual (or individuals), who are qualified through education, training, experience, or certified in infection, prevention and control, are appointed by the governing body, or responsible individual, as the infection preventionist(s)/infection control professional(s) responsible for the infection prevention and control program at the CAH and that the appointment is based on the recommendations of medical staff and nursing leadership. We recognize that CAHs use a variety of staffing models including direct employment, contracted services, and shared service agreements. In § 485.640, we do not require any specific staffing model(s) for the professional(s) responsible for the facility-wide infection prevention and control and antibiotic stewardship programs. The CAH's staffing for these programs should be appropriate to the scope and complexity of the services offered at the CAH.

We propose at § 485.640(a)(2) that the infection prevention and control program, as documented in its policies and procedures, employ methods for preventing and controlling the transmission of infections within the CAH and between the CAH and other healthcare settings. We believe that a coordinated, overall quality approach would enable CAHs to achieve results that would better serve their patients and reduce cost. The program, as documented in its policies and procedures, would have to employ methods for preventing and controlling the transmission of infection within the CAH setting (for example, among patients, personnel, and visitors) as well as between the CAH (including outpatient services) and other institutions and healthcare settings. As discussed at section II.G of this preamble, we would expect CAHs to look to the CDC guidelines for guidance (*http://www.cdc.gov/hai/pdfs/guidelines/Ambulatory-Care+Checklist_508_11_2015.pdf.*)

§ 485.640(a)(3) Healthcare-Associated Infections (HAIs)

We propose at § 485.640(a)(3) that the infection prevention and control program include surveillance, prevention, and control of HAIs, including maintaining a clean and sanitary environment to avoid sources and transmission of infection, and that the program also address any infection control issues identified by public health authorities.

§ 485.640(a)(4) Scope and Complexity

We are proposing at § 485.640(a)(4) that the infection prevention and control program reflects the scope and complexity of the services provided by the CAH.

§ 485.640(b)(1) Leader of the Antibiotic Stewardship Program

We propose at § 485.640(b)(1) that the CAH's governing body ensure that an individual, who is qualified through education, training, or experience in infectious diseases and/or antibiotic stewardship is appointed as the leader of the antibiotic stewardship program and that the appointment is based on the recommendations of medical staff and pharmacy leadership.

§ 485.640(b)(2)(i),(ii), and (iii) Goals of the Antibiotic Stewardship Program

The proposed requirements at § 485.640(b)(2)(i),(ii), and (iii) would ensure that the following goals for an antibiotic stewardship program are met: (i) Demonstrate coordination among all components of the CAH responsible for antibiotic use and resistance, including, but not limited to, the infection prevention and control program, the QAPI program, the medical staff, and nursing and pharmacy services; (ii) document the evidence-based use of antibiotics in all departments and services of the CAH; and (iii) demonstrate improvements, including sustained improvements, in proper antibiotic use, such as through reductions in, CDI and antibiotic resistance in all departments and services of the hospital. We believe that these three components are essential for an effective program.

§ 485.640(b)(3) and (4) Nationally Recognized Guidelines; and Scope and Complexity

These provisions would require the CAH to ensure that the antibiotic stewardship program adheres to the nationally recognized guidelines, as well as best practices, for improving antibiotic use. The CAH's stewardship program would have to reflect the scope and complexity of services offered. For example, we would not expect a CAH that did not offer surgical services to address antibiotic stewardship issues specific to surgical patients. We believe these proposed requirements are necessary to promote a facility-wide culture of quality improvement.

§ 485.640(c)(1), (2), and (3) Governing Body; Infection Prevention and Control Professionals'; and Antibiotic Stewardship Program Leader's Responsibilities

We would require that the governing body or responsible individual ensure that the infection prevention and control issues identified by the infection prevention and control professionals be addressed in collaboration with CAH leadership. We therefore propose at § 485.640(c)(1)(i) and (ii), requirements that the governing body or responsible individual ensure that:

- Systems are in place and operational for the tracking of all infection surveillance, prevention, and control, and antibiotic use activities in order to demonstrate the implementation, success, and sustainability of such activities; and
- All HAIs and other infectious diseases identified by the infection prevention and control program and antibiotic use issues identified by the antibiotic stewardship program are addressed in collaboration with CAH QAPI leadership.

At § 485.640(c)(2)(i)–(vi), we propose that the responsibilities of the infection prevention and control professionals would include the development and implementation of facility-wide infection surveillance, prevention, and control policies and procedures that adhere to nationally recognized guidelines.

The governing body or responsible individual would be responsible for all documentation, written or electronic, of the infection prevention and control program and its surveillance, prevention, and control activities. Additionally, the infection preventionist(s)/infection control professional(s) would be responsible for:

- Communication and collaboration with the CAH's QAPI program on infection prevention and control issues;
- Competency-based training and education of CAH personnel and staff including professional health care staff and, as applicable, personnel providing services in the CAH under agreement or arrangement, on the practical applications of infection prevention and control guidelines, policies and procedures;
- Prevention and control of HAIs, including auditing of adherence to infection prevention and control policies and procedures by CAH personnel; and
- Communication and collaboration with the antibiotic stewardship program.

Finally in this CoP, at § 485.640(c)(3), we propose requirements for the leader of the antibiotic stewardship program similar to the proposed responsibilities for the CAH's designated infection preventionist(s)/infection control professional(s) at paragraph (c)(2). We believe that a CAH's antibiotic stewardship program is the most effective means for ensuring appropriate antibiotic use. We also believe that such a program would require a leader responsible and accountable for its success. Therefore, we propose that the leader of the antibiotic stewardship program would be responsible for the development and implementation of a facility-wide antibiotic stewardship program, based on nationally recognized guidelines, to monitor and improve the use of antibiotics. We also propose that the leader of the antibiotic stewardship program would be responsible for all documentation, written or electronic, of antibiotic stewardship program activities. The leader would also be responsible for communicating and collaborating with medical and nursing staff, pharmacy leadership, and the CAH's infection prevention and control and QAPI programs, on antibiotic use issues.

Finally, we propose that the leader would be responsible for the competency-based training and education of CAH personnel and staff, including medical staff, and, as applicable, personnel providing contracted services in the CAHs, on the practical applications of antibiotic stewardship guidelines, policies, and procedures.

5. Quality Assessment and Performance Improvement (QAPI) Program (§ 485.641)

Since May 26, 1993 (58 FR 30630), the "Periodic evaluation and quality assurance review" CoP (§ 485.641) has not been updated to reflect current industry standards that utilize the QAPI model (§ 482.21) to assess and improve patient care. Currently, a CAH is required to evaluate its total program (for example, policies and procedures and services provided) annually. The evaluation must include reviewing the utilization of the CAH services using a representative sample of both active and closed clinical records, as well as reviewing the facility's health care policies. The purpose of the evaluation is to determine whether the utilization of services was appropriate, the established policies were followed, and if any changes are needed. The CAH's staff considers the findings of the evaluation and takes the necessary corrective action. These requirements focus on how well the CAH adhered to the evaluation standards and require the CAH to document its efforts. The existing annual evaluation and quality assurance review requirements at § 485.641 are reactive; that is, once a problem has been identified, the health care facility takes action to correct it.

The focus of a QAPI program is to proactively maximize quality improvement activities and programs, even in areas where no specific deficiencies are noted. A QAPI program enables the organization to review systematically its operating systems and processes of care to identify and implement opportunities for improvement.

An effective QAPI program that is engaged in continuous improvement efforts is essential to a provider's ability to provide high quality and safe care to its patients, while reducing the incidence of medical errors and adverse events. However, patient harm still remains a considerable problem in our nation's hospitals. The IOM report, "To Err Is Human: Building a Safer Health System," focused widespread attention on the problem of adverse events and is a call to action for the entire health care system. (L.T. Kohn, J.M. Corrigan, and M.S. Donaldson, eds., To Err Is Human: Building a Safer Health System, A Report of the Committee on Quality of Health Care in America, p. 102, IOM, National Academy Press, 2000.) The report highlighted patient injuries associated with medical errors. More recent reports, however, document that the problems identified in "To Err is Human" have not yet been resolved. A 2010 Office of the Inspector General Report estimated that during October 2008, 13.5 percent of hospitalized Medicare beneficiaries experienced adverse events during their hospital stays (Department of Health and Human Services Office of Inspector General, "Adverse Events in Hospitals: National Incidence Among Medicare Beneficiaries" (OEI–06–09–00090). A 2013 literature review concluded that at least 210,000 deaths per year were associated with preventable harm in hospitals. The evidence indicates that patients are being harmed every day in hospitals across the country and that more work is needed to reduce this harm.

In "To Err is Human," an error is defined as "the failure of a planned action to be completed as intended or the use of a wrong plan to achieve an aim." Examples of medical errors include:

- Medication administration errors (for example, wrong medication, wrong dosage, wrong route, wrong time, wrong patient.);
- Equipment failures (for example, defibrillator without working batteries, etc.); and
- Diagnostic errors.

A 2003 report by The National Advisory Committee on Rural Health and Human Services to the Secretary of the HHS notes that the general concept of health care quality does not change from urban to rural settings (The National Advisory Committee on Rural Health and Human Services. Health Care Quality: The Rural Context. April, 2003; p. 6–10). The focus remains on providing the right service at the right time in the right way to achieve the optimal outcome. The only rural-urban variable within that equation is the context. While the notion of quality remains constant, the settings in which the care is provided—including their structures and processes (for example, transferring patients to larger facilities vs. being able to keep them for observation)—can be quite different. The most elementary differences have to do with scope and scale.

The 2004 IOM Report, "Quality Through Collaboration: The Future of Rural Health," reports that to improve quality, rural providers, like their urban counterparts, must adopt a comprehensive approach to quality improvement (National Research Council. Quality Through Collaboration: The Future of Rural Health Care. Washington, DC: The National Academies Press, 2005. *http://www.iom.edu/Reports/2004/Quality-Through-Collaboration-The-Future-of-Rural-Health.aspx#sthash.2zF6T8kE.dpuf*). This approach needs to encompass clinical knowledge and the tools necessary to apply this knowledge to practice, including practice guidelines and computer-aided decision support, standardized performance measures, performance measurement and data feedback capabilities, and quality improvement processes and resources.

A QAPI program would enable a CAH to systematically review its operating systems and processes of care to identify and implement opportunities for improvement. We also believe that the leadership or governing body or responsible individual of a CAH must be responsible and accountable for patient safety, including the reduction of medical errors in the facility.

We propose to revise § 485.641 to set forth new explicit requirements for a QAPI program at a CAH. We believe that much of the work and resources that are currently required under the existing periodic evaluation and quality assurance CoP would be utilized to adhere to the new QAPI requirement. As noted previously, we propose to retain the requirements under paragraphs § 485.641(b)(3) and (4) regarding the evaluation of the diagnosis and treatment furnished by physicians and non-physician practitioners; we are proposing that this be moved from the "Periodic evaluation and quality assurance" CoP, and relocate them to a new standard under the "Staffing and staff responsibilities" CoP at § 485.631.

CAHs are currently required to have an effective quality assurance program to evaluate the quality and appropriateness of the diagnosis and treatment furnished in the CAH and of the treatment outcomes. We are proposing that, under § 485.641, the CAH be required to develop, implement, and maintain an effective, ongoing, facility-wide, and data-driven QAPI program. The QAPI program would have to be appropriate for the complexity of the CAH's organization and services provided.

We propose to rename the current "Periodic evaluation and quality assurance review" provisions at § 485.641 "Condition of participation: Quality assessment and performance improvement program." At § 485.641, we also propose to revise and replace the current standards with the new proposed QAPI program containing the following six parts: (a) Definitions; (b) QAPI program design and scope; (c) Governance and leadership; (d) Program activities; (e) Performance improvement projects; and (f) Program data collection and analysis.

§ 485.641(a) Definitions

We have proposed at paragraph § 485.641(a) to provide definitions for the following terms: "adverse event," "error," and "medical error." We propose the same definition of "adverse event" currently found at § 482.70. We are also proposing the definitions of "error" and "medical error" that are largely drawn from the IOM. We believe that most CAHs are aware of these terms, but we are proposing to provide the following standard definitions:

- "Adverse event" means an untoward, undesirable, and usually unanticipated event that causes death or serious injury or the risk thereof;
- "Error" means the failure of a planned action to be completed as intended or the use of a wrong plan to achieve an aim. Errors can include problems in practice, products, procedures, and systems; and
- "Medical error" means an error that occurs in the delivery of healthcare services.

§ 485.641(b) QAPI Program Design and Scope

At proposed § 485.641(b)(1) "Program design and scope," we would require the CAH to have a QAPI program that would be appropriate for the complexity of the CAH's organization and services. This means that every CAH would utilize performance improvement measures that would be sensitive to that CAH's specific context. The QAPI program would be designed to monitor and evaluate performance of all services and programs of the CAH. In proposed paragraphs (b)(2) and (3), we would require the CAH to design a QAPI program that would be on-going and comprehensive, involving all departments of the CAH and services, including those services furnished under contract or arrangement. In proposed paragraph (b)(4), we would require CAHs to use objective measures in their QAPI program to evaluate its organizational processes, functions, and services. We also propose at paragraph (b)(5) that the CAH's QAPI program would address outcome indicators related to improved health outcomes and the prevention and reduction of medical errors, adverse events, hospital-acquired conditions, and transitions of care, including readmissions.

§ 485.641(c) Governance and Leadership

We propose at § 485.641(c) that the CAH's governing body or responsible individual be ultimately responsible for the CAH's QAPI program and at paragraph (c)(1) be responsible and accountable for ensuring that clear expectations for safety are communicated, implemented, and followed throughout the CAH. At § 485.641(c)(2), we propose that the QAPI efforts address priorities for improving quality of care and patient safety. At paragraph (c)(3), all improvement actions would be evaluated and modified as needed by the designated CAH staff. We propose at paragraph (c)(4) that the governing body or responsible individual exercising management authority over the CAH ensure that adequate resources are allocated for measuring, assessing, improving, and sustaining the CAH's performance and reducing risk to patients. Once this rule is finalized, CMS will develop the appropriate subregulatory guidance so that surveyors will be able to determine what constitutes "adequate resources." In proposed paragraphs (c)(5) and (6), we would require the governing body or responsible individual to be responsible for annually determining the number of distinct quality improvement projects the CAH would conduct. They would also be responsible for the CAH developing and implementing policies and procedures for QAPI that address what actions the CAH staff should take to prevent and report unsafe patient care practices, medical errors, and adverse events.

485.641(d) Program Activities

We propose at § 485.641(d), "Program activities", that for each of the areas discussed in paragraphs (b) and (c) of this section, the CAH would have to:

- Focus on measures related to improved health outcomes that are shown to be predictive of desired patient outcomes;
- Use the measures to analyze and track its performance; and
- Set priorities for performance improvement, considering either high-volume, high-risk services, or problem-prone areas.

Analyses would be expected to be conducted at regular intervals to enable the CAH to identify areas or opportunities for improvement.

§ 485.641(e) Performance Improvement Projects

We propose at § 485.641(e), "Performance Improvement Projects," that a CAH would have to conduct distinct performance improvement projects that are proportional to the scope and complexity of the CAH's services and operations. We also propose that the CAH would be required to maintain and demonstrate written or electronic evidence and documentation of its QAPI projects.

§ 485.641(f) Program Data Collection and Analysis

Collecting and analyzing data is fundamental to quality improvement. The CAH should be able to demonstrate that the data it collects measure the quality of patient care. Therefore, we propose at § 485.641(f)(1) and (2) that a CAH's QAPI program be required to incorporate quality indicator data including patient care data, quality measures data, and other relevant data. The CAH must use the data collected to monitor the effectiveness and safety of services provided and quality of care. A CAH must also identify opportunities for improvement and changes that will lead to improvement. Since 2011, the Medicare Beneficiary Quality Improvement Project (MBQIP), supported by the Federal Office of Rural Health Policy's Medicare Rural Hospital Flexibility Grant Program, has encouraged CAHs to collect and report quality data and has provided a means for CAHs to monitor the quality of care they provide and identify opportunities for improvement. To the extent that the MBQIP meets the proposed requirements for incorporating quality indicator data in its QAPI program, CAH adherence to the requirements of MBQIP is one such way that the CAH's QAPI program data collection requirements can be satisfied. MBQIP uses a rural-relevant subset of data based on Medicare quality reporting program. Current MBQIP measures and information resources for data analysis and performance improvement can be found at *https://www.ruralcenter.org/tasc/mbqip.* We propose at paragraph (f)(3) that the CAH's governing body or responsible individual must approve the frequency and the details of data collection.

6. Technical Corrections

We propose to correct a typographical error in the regulations at § 485.645 by correcting the word "provided" to "provide" in the lead first sentence.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs).

A. ICRs Regarding Patient's Rights (§ 482.13)

Proposed § 482.13(i) would establish explicit requirements that a hospital not discriminate against a patient or applicant for services on the basis of race, color, religion, national origin, sex (including gender identity), sexual orientation, or disability and that the hospital establish and implement a written policy prohibiting discrimination against a patient or applicant for services on the basis of race, color, religion, national origin, sex (including gender identity), sexual orientation, or disability. We propose to further require that each patient or applicant for services, and/or support person, where appropriate, is informed of the right to be free from discrimination against them on any of the aforementioned bases when he or she is informed of his or her other rights under § 482.13(a)(1). The burden associated with this requirement is the time and effort necessary for a hospital to develop written policies and procedures with respect to the rights of patients to be free from discrimination and to distribute that information to the patients.

We believe that most hospitals already have established policies and procedures regarding the rights of patients to be free from discrimination. Additionally, we believe that most hospitals include the anti-discrimination policies and procedures as part of their standard notice of patient rights. The burden associated with the notice of patient rights is currently approved under OMB control number 0938–0328.

We will be submitting a revision of the currently approved information collection request to account for the following burden.

We estimate that 4,900 hospitals must comply with the aforementioned information collection requirements. We further estimate that it will take each hospital 0.25 hours to comply with the requirement in proposed § 482.13(i). The total estimated annual burden associated with this requirement is 1,225 hours (4,900 hospitals × .25) at a cost of $83,300 (1,225 hours × $68 for a nurse's hourly salary).

B. ICRs Regarding Quality Assessment and Performance Improvement (§ 482.21)

The existing QAPI CoP requires each hospital to:

- Develop, implement, maintain, and evaluate its' own QAPI program;
- Establish a QAPI program that reflects the complexity of its organization and services;
- Establish a QAPI program that involves all hospital departments and services and focuses on improving health outcomes and preventing and reducing medical errors; and
- Maintain and demonstrate evidence of its QAPI program for review by CMS.

We are proposing a minor change to the program data requirements at § 482.21(b). Currently, we require that hospitals incorporate quality indicator data including patient care data, and other relevant data, for example, information submitted to, or received from, the hospital's Quality Improvement Organization.

We propose to update this requirement to reflect and capitalize on the wealth of important quality data available to hospitals through several quality data reporting programs. Specifically, we propose to require that the hospital QAPI program must incorporate quality indicator data including patient care data, and other relevant data such as data submitted to or received from quality reporting and quality performance programs, including, but not limited to, data related to hospital readmissions and hospital-acquired conditions. Hospitals are likely to be participating in one or more existing quality reporting and quality performance programs such as the Hospital Inpatient Quality Reporting program, the Hospital Value-Based Purchasing Program, the Hospital Acquired Condition Reduction program, Hospital Compare, the Medicare and Medicaid Electronic Health Record Incentive Programs, the Hospital Outpatient Quality Reporting program, and the Joint Commission's Quality Check™. Since a hospital is already collecting and reporting quality measures data for these programs, we do not believe that this proposed change would increase the information collection burden for hospitals.

C. ICRs Regarding Nursing Services (§ 482.23)

We propose to revise § 482.23(b), which currently states "There must be supervisory and staff personnel for each department or nursing unit to ensure, when needed, the immediate availability of a registered nurse for bedside care of any patient," to delete the term "bedside," which might imply only inpatient services to some readers. The nursing service must ensure that patient needs are met by ongoing assessments of patients' needs and must provide nursing staff to meet those needs regardless of whether the patient is an inpatient or an outpatient. We propose to allow a hospital to establish a policy that would specify which, if any, outpatient units would not be required to have an RN physically present as well as the alternative staffing plans that would be established under such a policy. We would require such a policy to take into account factors such as the services delivered; the acuity of patients typically served by the facility; and the established standards of practice for such services. In addition, we would propose that the policy must be approved by the medical staff and be reviewed annually. TJC-accredited hospitals are already allowed this flexibility in nursing services policy. Those hospitals that use their TJC accreditation for deeming purposes are required to have "Leaders [who] provide for a sufficient number and mix of individuals to support safe, quality care, treatment, and services. (Note: The number and mix of individuals is appropriate to the scope and complexity of the services offered.)" (CAMH, Standard LD.03.06.01, EP 3). Further, TJC-accredited hospitals also require the "nurse executive, registered nurses, and other designated nursing staff [to] write: Nursing policies and procedures." (CAMH, Standard NR.02.02.01, EP 3). Therefore, we expect that TJC-accredited hospitals already have the policies and procedures that satisfy the requirements in this subsection, including medical staff approval and annual review. If there are any tasks that a TJC-accredited hospital may need to complete to satisfy the requirement for this subsection, we expect that the burden imposed would be negligible. Thus, for the approximately 3,900 TJC-accredited hospitals the development of policies and procedures that would satisfy this subsection would constitute a usual and customary business practice as defined at 5 CFR 1320.3(b)(2).

The non TJC-accredited hospitals would need to review their current policies and procedures and update them so that they comply with the requirements in proposed § 482.23(b). This would be a one-time burden on the hospital. We estimate that this would require a physician, a nurse, and one administrator. Physicians earn an average hourly salary of $187, administrators earn an average hourly salary of $174, and registered nurses earn an hourly salary of $68 (2014 BLS Wage Data by Area and Occupation at *http://www.bls.gov/bls/blswage.htm*, adjusted upward by 100 percent to include fringe benefits and overhead costs). We estimate that each person would spend three hours on this activity for a total of nine hours at a cost of $1,287 (3 hours × $68 for a nurse's hourly salary + 3 hours × $174 for an administrator's hourly salary + 3 hours × $187 for a physician's hourly salary = $1,287). For all 1,000 non-TJC-accredited hospitals to comply with this requirement, we estimate a total one-time cost of approximately $1.3 million (1,000 hospitals × $1,287). We estimate that annual review of the policies and procedures would take one hour for each individual included for a total annual cost of $429,000 ((1 hour × $68 for a nurse's hourly salary + 1 hour × $174 for an administrator's hourly salary + 1 hour × $187 for a physician's hourly salary) × 1,000 hospitals). The burden associated with these requirements is captured in an information collection request (0938–NEW).

D. ICRs Regarding Medical Record Services (§ 482.24)

We are proposing to make changes to several of the provisions in this CoP so that the requirements are clearer regarding the distinctions between a patient's inpatient and outpatient status and the subtle differences between certain aspects of medical record documentation related to each status.

The current requirements at § 482.24(c) state that the content of the medical record must contain "information to justify admission and continued hospitalization, support the diagnosis, and describe the patient's progress and response to medications and services." While we believe that these terms are appropriate for inpatients, they do not fully capture the specific documentation necessary for outpatients. Therefore, we propose to revise the current regulatory language to require that the content of the medical record must contain "information to justify all admissions and continued hospitalizations, support the diagnoses, describe the patient's progress and responses to medications and services, and document all inpatient and outpatient visits to reflect the scope of all services received by the patient."

Similarly, we propose to revise § 482.24(c)(4)(ii) from the current requirement for documentation of "admitting diagnosis" to include "all inpatient and outpatient diagnoses," which would include any admitting diagnoses. Within this same standard, we are proposing to update several terms to reflect more current terminology and standards of practice. Therefore, at § 482.24(c)(4)(iv), we propose to require that the content of the record include "documentation of complications, hospital-acquired conditions, healthcare-associated infections, and unfavorable reactions to drugs and anesthesia." We also propose changes to § 482.24(c)(4)(vi) to add "progress notes" to the required documentation of "practitioners' orders" to emphasize the necessary documentation for both inpatients and outpatients. And we propose to add the phrase "to reflect the scope of all services received by the patient."

Continuing under this standard detailing the contents of the medical record, we propose to make revisions to the final two provisions under this standard. We propose to change § 482.24(c)(4)(vii) to require that all patient medical records must document discharge and transfer summaries with outcomes of all hospitalizations, disposition of cases, and provisions for follow-up care for all inpatient and outpatient visits to reflect the scope of all services received by the patient. We believe that these changes would clarify the importance of discharge summaries for patients being discharged home as well as the importance of transfer summaries for patients being transferred to post-acute care facilities such as nursing homes or inpatient rehabilitation facilities. In addition, we recognize the distinction between the services received by inpatient and those received by outpatients by proposing to include language that distinguishes between the inpatient and the outpatient experiences.

Finally, we emphasize the distinctions between discharges and transfers as well as between inpatients and outpatients by proposing to revise § 482.24(c)(4)(viii) so that the content of the medical record would contain "final diagnoses with completion of medical records within 30 days following all inpatient stays and within 7 days following all outpatient visits."

We believe that hospitals would need to review their current policies and procedures and update them so that they comply with the requirements in proposed § 482.24(c). This would be a one-time burden on the hospital. We estimate that this would require a physician, a nurse, and one administrator. Physicians earn an average hourly salary of $187, administrators earn an average hourly salary of $174, and registered nurses earn an hourly salary of $68 (2014 BLS Wage Data by Area and Occupation at *http://www.bls.gov/bls/blswage.htm*, adjusted upward by 100 percent to include fringe benefits and overhead costs). We estimate that each person would spend three hours on this activity for a total of nine hours at a cost of $1,287 (3 hours × $68 for a nurse's hourly salary + 3 hours × $174 for an administrator's hourly salary + 3 hours × $187 for a physician's hourly salary = $1,287). For all 4,900 hospitals to comply with this requirement, we estimate a total one-time cost of approximately $6.3 million (4,900 hospitals × $1,287). The burden associated with these requirements is captured in an information collection request (0938–NEW).

E. ICRs Regarding Provision of Services (§ 485.635)

Section 485.635(g) would require that a CAH not discriminate against patients or applicants for service on the basis of race, color, religion, national origin, sex (including gender identity), sexual orientation, or disability and that the

CAH establish and implement a written policy prohibiting discrimination against patients or applicants for service on the basis of race, color, religion, national origin, sex (including gender identity), sexual orientation, or disability. We propose to further require that each patient, and/or support person, where appropriate, be informed, in a language he or she can understand, of the right to be free from discrimination against them on any of the aforementioned bases (HHS OCR Compliance Review Initiative: "Advancing Effective Communication In Critical Access Hospitals" April 2013 *http://www.hhs.gov/sites/default/files/ocr/civilrights/activities/agreements/compliancereview_initiative.pdf*). The burden associated with this requirement is the time and effort necessary for a CAH to develop written policies and procedures with respect to the rights of patients to be free from discrimination and to distribute that information to the patients.

We estimate that 1,328 CAHs must comply with the aforementioned information collection requirements. We further estimate that it will take each CAH 0.25 hours to comply with the requirement in proposed § 485.635(g). The total estimated annual burden associated with this requirement is 332 hours (1,328 hospitals × .25) at a cost of $22,576 (332 hours × $68 for a nurse's hourly salary).

F. ICRs Regarding Condition of Participation: Quality Assessment and Performance Improvement Program (§ 485.641)

Proposed § 485.641 would require CAHs to develop, implement, and maintain an effective, ongoing, CAH-wide, data-driven QAPI program. The QAPI program must be appropriate for the complexity of the CAH's organization and the services it provides. In addition, CAHs must comply with all of the requirements set forth in proposed § 485.641(b) through (g).

The current CAH CoPs at § 485.641 require CAHs to have an effective quality assurance program to evaluate the quality and appropriateness of the diagnosis and treatment furnished in the CAH and the treatment outcomes. CAHs are currently required to conduct a periodic evaluation and quality assurance review (42 CFR 485.641(a)). They are required to evaluate its total program (for example, policies and procedures and services provided) annually. The evaluation must include reviewing the utilization of the CAH services using a representative sample of both active and closed clinical records, as well as reviewing the facility's health care policies. The purpose of the evaluation is to determine whether the utilization of services was appropriate, the established policies were followed, and if any changes are needed. The CAH's staff considers the findings of the evaluation and takes corrective action, if necessary (42 CFR 485.641(b)(5)(i)). Thus, we believe that all of the CAHs are performing the activities that are required to comply with many of the requirements in proposed § 485.641. However, we also believe that the CAHs would need to review their current quality assurance program and revise and, if needed, develop new provisions to ensure compliance with the proposed requirements.

TJC accreditation standards for performance improvement (PI) already require that CAHs collect, compile, and analyze to monitor their performance (TJC Accreditation Standard PI.01.01.01 and PI.02.01.01). These TJC-accredited CAHs must also improve their performance on an ongoing basis (TJC Accreditation Standard PI.03.01.01). Thus, we believe that the 324 TJC-accredited CAHs are already in compliance with the requirements in proposed § 485.641. However, each CAH would need to review their current practice to ensure that they are in compliance with all of the requirements under § 485.641. Any additional tasks those CAHs would need to comply with the requirements for this section should result in a negligible burden, if any. Thus, the burden for these activities for the 324 TJC-accredited CAHs will be excluded from the burden analysis because they constitute usual and customary business practices in accordance with 5 CFR 1320.3(b)(2).

The 1,004 non TJC-accredited CAHs would need to review their current programs and then revise and develop new provisions of their programs to ensure compliance with the proposed requirements. We believe that the CAH QAPI leadership (consisting of a physician, and/or administrator, mid-level practitioner, and a nurse) would need to have at least two meetings to ensure that the current annual evaluation and quality assurance (QA) program is transitioned into the proposed QAPI format. The first meeting would be to discuss the current quality assurance program and what needs to be included based on the new proposed QAPI provision. The second meeting would be to discuss strategies to update the current policies, and then to discuss the process for incorporating those changes. We believe that these meeting would take approximately two hours each. We would estimate that the physician would have a limited amount of time, approximately 1 hour to devote to the QAPI activities. Additionally, we estimate these activities would require 4 hours of an administrator's time, 4 hours of a mid-level practitioner's time, 14 hours of a nurse's time, and 2 hours of a clerical staff person's time for a total of 25 burden hours. We believe that the CAH's QAPI leadership (formerly the periodic evaluation and quality assurance leadership) would need to meet periodically to review and discuss the changes that would need to be made to their program. We also believe that a nurse would likely spend more time developing the program with the mid-level practitioner. The physician would likely review and approve the program. The clerical staff member would probably assist with the program's development and ensure that the program was disseminated to all of the necessary parties in the CAH.

Since a CAH is currently required to evaluate its total program and evaluate the quality and appropriateness of the services furnished, take appropriate action to address deficiencies and document such activities, we believe that the resources utilized on the current QA program would be utilized for the ongoing QAPI activities under proposed § 485.641(b)–(f). Thus, we estimate that for each CAH to comply with the requirements in this section it would require 25 burden hours (1 for a physician + 4 for an administrator + 4 for a mid-level practitioner + 14 for a nurse + 2 for a clerical staff person = 25 burden hours) at a cost of $1,975 ($187 for a physician + $392 for an administrator (4 hours × $98) + $380 for a mid-level practitioner (4 hours × $95) + $952 (14 hours × $68 for a nurse) + $64 for a clerical staff person (2 hours × $32). Therefore, for all 1,004 non TJC-deemed CAHs to comply with these requirements, it would require 25,100 burden hours (25 × 1,004 non TJC-deemed CAHs) at a cost of approximately $2 million ($1,975 for each CAH × 1,004 non TJC-deemed CAHs). We note here the difference in hourly salary between a hospital CEO/administrator ($174) and a CAH CEO/administrator ($98). The burden associated with these requirements is captured in an information collection request (0938-NEW).

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, CMS–3295–P, Fax: (202) 395–6974; or Email: *OIRA_submission@omb.eop.gov.*

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the DATES section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Statement of Need

CMS is aware, through conversations with stakeholders and federal partners, and as a result of internal evaluation and research, of outstanding concerns about CoPs for hospitals and CAHs, despite recent revisions. We believe that the proposed revisions would alleviate many of those concerns. In addition, modernization of the requirements would cumulatively result in improved quality of care and improved outcomes for all hospital and CAH patients. We believe that benefits would include reduced readmissions, reduced incidence of hospital-acquired conditions (including healthcare-associated infections), improved use of antibiotics at reduced costs (including the potential for reduced antibiotic resistance), and improved patient and workforce protections.

These benefits are consistent with current HHS Quality Initiatives, including efforts to prevent HAIs; the national action plan for adverse drug event (ADE) prevention; the national strategy for Combating Antibiotic-Resistant Bacteria (CARB); and the Department's National Quality Strategy (*http://www.ahrq.gov/workingforquality/index.html*). Principles of the National Quality Strategy supported by this proposed rule include eliminating disparities in care; improving quality; promoting consistent national standards while maintaining support for local, community, and State-level activities that are responsive to local circumstances; care coordination; and providing patients, providers, and payers with the clear information they need to make choices that are right for them (*http://www.ahrq.gov/workingforquality/nqs/principles.htm*). Our proposal to prohibit discrimination would support eliminating disparities in care, and we believe our proposals about QAPI and infection prevention and control and antibiotic stewardship programs will improve quality and promote consistent national standards. Our proposals regarding the term licensed independent practitioners and establishing policies and protocols for when the presence of an RN is needed will support care coordination and quality of care. In sum, we believe our proposed changes are necessary, timely, and beneficial.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate that this rulemaking is "economically significant" as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis (RIA) that, to the best of our ability, presents the costs and benefits of the rulemaking.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each chamber of the Congress and to the Comptroller General of the United States. HHS will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

This proposed rule would create ongoing cost savings to hospitals and CAHs in many areas. We believe these savings would largely, but not entirely, offset any costs to hospitals and CAHs that would be incurred by other changes we have proposed in this rule. The financial savings and costs are summarized in the table that follows. We welcome public comments on all of our burden assumptions and estimates. As discussed later in this regulatory impact analysis, substantial uncertainty surrounds these estimates and we especially solicit comments on either our estimates of likely savings/costs or the specific regulatory changes that drive these estimates.

TABLE 1—SECTION-BY-SECTION ECONOMIC IMPACT ESTIMATES

Issue	Frequency	Number of affected entities	Likely savings (+) or costs (−) to society ($ millions)
Hospitals		4,900	
• Patients' rights (ICR)	One-time	4,900	0.083(−)

TABLE 1—SECTION-BY-SECTION ECONOMIC IMPACT ESTIMATES—Continued

Issue	Frequency	Number of affected entities	Likely savings (+) or costs (−) to society ($ millions)
• Nursing services (ICR)	Recurring Annually	1,000	1.3(−)
• Nursing services (ICR)	One-time	1,000	0.429(−)
• Medical record services (ICR)	One-time	4,900	6.3(−)
		4,900	20(−)
• Infection Prevention & Control and Antibiotic Stewardship (RIA).	One-time	2,940	>693 to 1,193(−)
	Recurring annually		
	Recurring Annually	2,940	1,020(+)
CAHs		1,328	
• Provision of services (ICR)	One-time	1,328	0.023(−)
• QAPI (ICR)	Recurring annually	1,004	2(−)
• Food and dietary (RIA)	Recurring annually	650	Not estimated
• Infection Prevention & Control and Antibiotic Stewardship (RIA).	One-time	1,328	5(−)
	Recurring Annually	1,328	45(−)
	Recurring Annually	1,328	37(+)
Sub-Total Savings			1,057(+)
Sub-Total Costs			>773 to 1,273(−)
Overall Savings Net of Costs			<−216 to 284(+)

Note: This table includes entries only for those proposed reforms that we believe would have a measurable economic effect; includes estimates from ICRs and RIAs.

C. Anticipated Effects

1. Effects on Hospitals and CAHs

There are about 4,900 hospitals and 1,300 CAHs that are certified by Medicare and/or Medicaid. We use these figures to estimate the potential impacts of this proposed rule. In the estimates that were shown in the Collection of Information Requirements section of the preamble and in the Regulatory Impact Analysis here, we estimate hourly costs as follows. Using data from the Bureau of Labor Statistics, we have estimates of the national average hourly wage for all medical professions (for an explanation of these data see *http://www.bls.gov/news.release/archives/ocwage_03252015.htm*). These data do not include the employer share of fringe benefits such as health insurance and retirement plans, the employer share of OASDI taxes, or the overhead costs to employers for rent, utilities, electronic equipment, furniture, human resources staff, and other expenses that are incurred for employment. The HHS-wide practice is to account for all such costs by adding 100 percent to the hourly cost rate, doubling it for purposes of estimating the costs of regulations. We use the following average hourly wages for registered dietitians and nutrition professionals, registered nurses, advanced practice registered nurses, physician assistants, pharmacists, network data analysts, hospital CEO/administrators, CAH CEO/administrators, clerical staff workers, and physicians respectively: $56, $68, $95, $95, $113, $70, $174, $98, $30, and $187 (2014 BLS Wage Data by Area and Occupation, including both hourly wages and fringe benefits, at *http://www.bls.gov/bls/blswage.htm* and *http://www.bls.gov/ncs/ect/*).

Licensed Independent Practitioners (Patients' Rights § 482.13)

We propose to delete the modifying term "independent" from the CoP at § 482.13(e)(5), as well as at § 482.13(e)(8)(ii). Therefore, we are proposing that § 482.13(e)(5) would now state that the use of restraint or seclusion must be in accordance with the order of a physician or other licensed practitioner who is responsible for the care of the patient and authorized to order restraint or seclusion by hospital policy in accordance with State law. We are proposing that § 482.13(e)(8)(ii) would now state that after 24 hours, before writing a new order for the use of restraint or seclusion for the management of violent or self-destructive behavior, a physician or other licensed practitioner who is responsible for the care of the patient and authorized to order restraint or seclusion by hospital policy in accordance with State law must see and assess the patient. While we believe that hospitals might be able to achieve some costs savings through these changes (by having additional licensed practitioners such as PAs allowed to write restraint and seclusion orders and thus relieve some of the burden from physicians), we do not have a reliable means of quantifying these possible cost savings. We seek comment as to whether the assumption of cost savings is reasonable and welcome any data that may help inform the costs and benefits of this provision.

Infection Control and Antibiotic Stewardship (Infection Prevention and Control § 482.42)

We are revising the hospital requirements at 42 CFR 482.42, "Infection control," which currently require hospitals to provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. Hospitals are also currently required to have a designated infection control officer, or officers, who are required to develop a system to identify, report, investigate and control infections and communicable diseases of patients and personnel. The hospital's CEO, medical staff, and director of nursing services are charged with ensuring that the problems identified by the infection control officer or officers are addressed in hospital training programs and their QAPI program. The CEO, medical staff, and director of nursing services are also responsible for the implementation of successful corrective action plans in affected problem areas.

We are proposing a change to the title of this CoP to "Infection prevention and control and antibiotic stewardship programs." By adding the word "prevention" to the CoP name, our intent is to promote larger, cultural changes in hospitals such that prevention initiatives are recognized on balance with their current, traditional control efforts. And by adding "antibiotic stewardship" to the title, we would emphasize the important role that a hospital could play in improving patient care and safety and combatting antimicrobial resistance through implementation of a robust stewardship program that follows nationally recognized guidelines for appropriate antibiotic use. Along with these changes, we propose to change the introductory paragraph to require that a hospital's infection prevention and control and antibiotic stewardship programs be active and hospital-wide for the surveillance, prevention, and control of HAIs and other infectious diseases, and for the optimization of antibiotic use through stewardship. We would also require that a program demonstrate adherence to nationally recognized infection prevention and control guidelines for reducing the transmission of infections, as well as best practices for improving antibiotic use, for reducing the development and transmission of HAIs and antibiotic-resistant organisms. While these particular changes are new to the regulatory text, it is worth noting that these requirements, with the exception of the new requirement for an antibiotic stewardship program, have been present in the Interpretive Guidelines (IGs) for hospitals since 2008 (See A0747 at Appendix A—Survey Protocol, Regulations and Interpretive Guidelines for Hospitals, *http://cms.gov/manuals/Downloads/som107ap_a_hospitals.pdf*).

Infection Prevention and Control

Specifically, at § 482.42(a)(1), we propose to require the hospital to appoint an infection preventionist(s)/infection control professional(s). Within this proposed change we are deleting the outdated term, "infection control officer," and replacing it with the more current and accurate terms, "infection preventionist/infection control professional." CDC has defined "infection control professional (ICP)" as "a person whose primary training is in either nursing, medical technology, microbiology, or epidemiology and who has acquired specialized training in infection control." In designating infection preventionists/ICPs, hospitals should ensure that the individuals so designated are qualified through education, training, experience, or certification (such as that offered by the CBIC, or by the specialty boards in adult or pediatric infectious diseases offered for physicians by the American Board of Internal Medicine (for internists) and the American Board of Pediatrics (for pediatricians). Since this requirement has been present in the IGs since 2008, we believe that hospitals have been aware of CMS' expectations for the qualifications of infection control officers. The Joint Commission has a similar requirement (TJC Accreditation Standard IC.01.01.01) and so we believe that hospitals accredited by TJC (over 75 percent of all hospitals (*http://www.jointcommission.org/facts_about_hospital_accreditation/*)) would already be in compliance, or near compliance, with this requirement. The Joint Commission requires that a hospital identify the individual(s) responsible for its infection prevention and control program, including the individual(s) with clinical authority over the infection prevention and control program. For the 25 percent of hospitals not accredited by TJC, we are calculating the burden for these hospitals to come into compliance with this requirement.

Based on our experience with hospitals, we believe that most ICPs would be registered nurses with experience, education, and training in infection control. Twenty-five percent of hospitals not accredited by TJC is 1,225 hospitals. Each hospital would be required to employ at least one ICP fulltime (52 weeks × 40 hours = 2,080 hours) at $68 per hour. The cost per hospital would be $141,440 annually (2,080 hours × $68 = $141,440). The total cost for all non-TJC-accredited hospitals would be approximately $173 million annually (1,225 × $141,440 = 173,264,000).

We believe that the other proposed requirements in this section of the CoP would constitute additional burden. Each hospital would be required to review their current infection control program and compare it to the new requirements contained in this section. After performing this comparison, each hospital would be required to revise their program so that it complied with the requirements in this section. Based on our experience with hospitals, we believe that a physician and a nurse on the infection control team would conduct this review and revision of the program. We believe both the physician and the nurse would spend 16 hours each for a total of 32 hours. Physicians earn an average of $187 an hour. Nurses earn an average salary of $68 an hour. Thus, to ensure their infection control program complied with the requirements in this section, we estimate that each hospital would require 32 burden hours (16 hours for a physician and 16 hours for a nurse = 32 burden hours) at a cost of $4,080 ($2,992 ($187 an hour for a physician × 16 burden hours) + $1,088 ($68 an hour for a nurse × 16 burden hours)). Based on the estimate, for all 4,900 hospitals, complying with this requirement would require 156,800 burden hours (32 hours for each hospital × 4,900 hospitals = 156,800 burden hours) at a one-time cost of approximately $20 million ($4,080 for each hospital × 4,900 hospitals = $19,992,000 estimated cost).

Antibiotic Stewardship

Similarly at § 482.42(b), we believe that the proposed requirements for a hospital to have an active antibiotic stewardship program, and for its organization and policies, would constitute additional regulatory burden, as will be discussed in more detail below. However, we believe that the estimated costs of an AS program would be greatly offset by the savings that a hospital would achieve through such a program. The most obvious savings would be from decreased inappropriate antibiotic use leading to overall decreased drug costs for a hospital. Our review of the literature showed significant savings in this area, with annual savings proportional to bed size of the hospital or hospital unit. Reported annual savings ranged from $27,917 (Canadian dollars) for a 12-bed medical/surgical intensive care unit to $2.1 million for an 880-bed academic medical center (Leung V, Gill S, Sauve J, Walker K, Stumpo C, Powis J. Growing a "positive culture" of antimicrobial stewardship in a community hospital. The Canadian journal of hospital pharmacy. 2011; 64(5):314–20; Beardsley JR, Williamson JC, Johnson JW, Luther VP, Wrenn RH, Ohl CC. Show me the money: Long-term financial impact of an antimicrobial stewardship program. Infection control and hospital epidemiology: The official journal of the Society of Hospital Epidemiologists of America. 2012; 33(4):398–400). We specifically note the $177,000 in annual drug cost savings achieved by a 120-bed community hospital with its AS program and would use that as the average cost savings for the average-sized 124-bed hospital discussed above (LaRocco 2003, CID "Concurrent antibiotic review programs-a role for infectious diseases specialists at small community hospitals"). Using this assumption, we believe that the annual drug cost savings for 60 percent of all 4,900 hospitals under this proposed rule would be $520,380,000 or approximately $520 million (2,940 hospitals × $177,000 in drug cost savings).

In addition to these savings, we also believe that the proposed requirement for an AS program would assist hospitals in significantly reducing rates of CDI and the attendant costs. Based on an AS program model developed by the CDC, a hospital combined IC/AS program with an average effectiveness rate of 50 percent would reduce the number of CDIs among Medicare beneficiaries annually by 101,000

(Rachel B. Slayton, Ph.D., MPH; R. Douglas Scott II, Ph.D.; James Baggs, Ph.D.; Fernanda C. Lessa, MD; L. Clifford McDonald, MD; John A. Jernigan, MD. "The Cost-Benefit of Federal Investment in Preventing Clostridium difficile Infections through the Use of a Multifaceted Infection Control and Antimicrobial Stewardship Program," Infection Control & Hospital Epidemiology 2015;00(0):1–7). The costs examined in the model were costs for patients who developed CDIs while they were in the hospital or had to be re-admitted to the hospital for a case of CDI that was a result of a recent hospitalization, so the costs are much higher than what would be associated with outpatient cases. The 101,000-reduction is an annual reduction in the number of cases of CDI among patients who develop the infection because of medical care; that is, they were admitted for something else and then acquired CDI while getting care. It should be noted that the 101,000 number actually comprises two types of CDI—cases that occur while the patient is in the hospital and cases that are directly attributable to a recent hospitalization, but which manifest after the patient is discharged and requires a readmission. The cost for patients who develop the infection while they are already in the hospital is between $4,323 and $8,146. However, the infections related to a recent hospital stay that require readmission are more expensive, on average, because they require an entirely new admission. The cost of those cases is between $7,061 and $11,601. Slayton et al. estimate $2.5 billion in federal savings over five years, or an annual average of $0.5 billion.[2] We believe that the combined annual savings that hospitals could achieve with the proposed AS program and the proposed revisions to infection control would be $1,020,000,000 or $1 billion.

We note that these savings would be both to hospitals as well as healthcare insurers, including Medicare. However, we are not able to distinguish the savings that would accrue to each group in this analysis. Healthcare-associated infections are known to be expensive to insurers, including CMS. Preventing these infections will reduce CMS and other insurer expenditures, both on direct hospital costs and through reduced re-admissions. The cost-savings estimates for CDI included in the RIA provide an example of the savings Medicare and other insurers could realize through reductions in just one HAI.[3]

We anticipate that the drug savings accrue to the hospitals. The CDI savings are likely shared by hospitals and insurers. Hospitals do bear some of these costs of CDI infections, especially if the CDI case complicates a hospitalization—for example if a patient admitted for pneumonia gets CDI, under bundled payment rules, the hospital would likely make less money from that admission. Also, CDI now also factors into annual payment updates under the inpatient quality reporting program, so hospitals with high CDI rates could face payment reductions.

We believe that the burden of implementing and maintaining an AS program includes the salaries of the qualified personnel needed to establish and manage such a hospital program. Our review of the literature, consultations with CDC, and experience with hospitals suggests that the establishment and maintenance of a hospital antibiotic stewardship program as proposed here, for an average-size hospital (approximately 124 beds), would require the services of a physician (preferably one with training in infectious diseases) and a clinical pharmacist, and also a network data analyst, at the following proportions of full-time employee salaries respectively: 0.10, 0.25, and 0.05. We believe that these personnel costs would constitute the real burden for these proposed requirements. To determine the cost of this burden, we added the proportion of full-time salaries required of a physician, a clinical pharmacist, and a network analyst. We also based our estimates on the assumption that 60 percent of hospitals do not yet have programs that implement all of the CDC core elements (based on data from the 2015 NHSN survey). Based on these assumptions, the total annual cost for a hospital to establish and maintain an antibiotic stewardship program would be $100,900 (($187 × 0.10 × 2,000 hours per year = $37,400 for a physician) + ($113 × 0.25 × 2,000 hours per year = $56,500 for a clinical pharmacist) + ($70 per hour × 0.05 × 2,000 hour per year = $7,000 for a network data analyst)). The total annual labor cost for 60 percent of hospitals ($100,900 × 2,940) would be approximately $297 million.

As shown above, however, we estimate that the drug cost savings of implementing and maintaining IC/AS programs would be $520.4 million. For hospitals to not have voluntarily implemented such programs indicates that their costs are at least as great as their savings; therefore, either labor costs are underestimated at $297 million or there are non-labor costs involved in the implementation and maintenance of IC/AS programs. We therefore estimate $520.4 million as a lower bound on the costs associated with this provision of the proposed rule. Moreover, as discussed previously, non-drug cost savings may also accrue to hospitals; if so, then lack of voluntary implementation indicates that costs associated with this provision would be at least $1.0 billion. We invite public comment regarding the amount by which costs exceed savings in cases of non-voluntary IC/AS program adoption.

Ordering Privileges for Qualified Dietitians (RDs) and Qualified Nutrition Professionals (Provision of Services § 485.635)

We propose to revise the CAH requirements at 42 CFR 485.635(a)(3)(vii), which currently requires that the nutritional needs of inpatients are met in accordance with recognized dietary practices and the orders of the practitioner responsible for the care of the patients. Specifically, we are proposing revisions that would change the CMS requirements to allow for flexibility in this area by requiring that all patient diets, including therapeutic diets, must be ordered by a practitioner responsible for the care of the patient, or by a qualified dietitian or qualified nutrition professional as authorized by the medical staff in accordance with State law governing dietitians and nutrition professionals.

With these proposed changes to the current requirements, a CAH would have the regulatory flexibility to grant qualified dietitians/nutrition professionals specific dietary ordering privileges (including the capacity to order specific laboratory tests to monitor nutritional interventions and then modify those interventions as needed). We believe that this is another area of change to the requirements that might produce savings since our proposal would allow physicians to delegate to a qualified dietitian or qualified nutrition professional the task of prescribing patient diets, including therapeutic diets, to the extent allowed by state law.

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[2] Slayton et al. appear not to account for the increased Medicare costs that would result from IC/AS program-associated reductions in CDI-related deaths. Although such an accounting would be appropriate to include in this regulatory impact analysis, its negative effect on estimated net benefits would almost certainly be more than offset by the inclusion of a willingness-to-pay estimate of the value of life extension. Willingness-to-pay approaches can also be used to monetize the decrease in pain and suffering associated with reductions in non-fatal morbidity, so we request data that would allow for more thorough estimation of all of these effects (*i.e.*, the societal benefits of reduced non-fatal CDI illness and the societal benefits and costs of reduced fatal CDI illness).

[3] We invite data that would allow for quantification of the rule's impacts on HAIs other than CDI.

We further believe that dietitians or other clinically qualified nutrition professionals are already performing patient dietary assessments and making dietary recommendations to the physician (or PA or APRN) who then evaluates the recommendations and writes orders to implement them. Our analysis does not take into account improved quality of life nor improved clinical outcomes for the patient. We do not currently have data to more precisely estimate the savings that this proposed revision could produce in CAHs. We welcome commenters to provide data that might assist in a more precise estimate. However, we believe that it might allow for better use of both physician/PA/APRN and dietitian/nutrition professional time and could result in improved quality of life and improved clinical outcomes for CAH patients.

More obviously, dietitians/nutrition professionals with ordering privileges would be able to provide dietary/nutritional services at lower costs than physicians (as well as APRNs and PAs, two categories of non-physician practitioners that have traditionally also devised and written patient dietary plans and orders). This cost savings stems in some part from significant differences in the average salaries between the professions and the time savings achieved by allowing dietitians/nutrition professionals to autonomously plan, order, monitor, and modify services as needed and in a more complete and timely manner than they are currently allowed. Savings would be realized by CAHs through the physician/APRN/PA time and salaries saved.

Physicians, APRNs, and PAs often lack the training and educational background to manage the nutritional needs of patients with the same efficiency and skill as dietitians/nutrition professionals. The addition of ordering privileges enhances the ability that dietitians/nutrition professionals already have to provide timely, cost-effective, and evidence-based nutrition services as the recognized nutrition experts on a CAH interdisciplinary team.

It might seem natural to calculate these cost savings for CAHs based on the following assumptions:

- There is an average hourly cost difference of $70 between dietitians/nutrition professionals on one side ($56 per hour) and the hourly cost average for physicians, APRNs, and PAs ($126 per hour) on the other;
- There were 282,584 inpatient visits by Medicare beneficiaries in 2011 (According to a December 2013 OIG report (*http://oig.hhs.gov/oei/reports/oei-05-12-00081.pdf*)) with each of these stays requiring at least one dietary plan and orders;
- On average, each dietary order, including ordering and monitoring of laboratory tests, subsequent modifications to orders, and dietary orders for discharge/transfer/outpatient follow-up as needed, will take 30 minutes (0.5 hours) of a physician's/APRN's/PA's/dietitian's/nutrition professional's time per patient during an average stay; and
- We estimate that approximately 50 percent of CAHs (or approximately 650 CAHs) have not already granted ordering privileges to dietitians and nutrition professionals, reducing the number of total number of CAH inpatient stays to 141,292.

The resulting savings would be $7,608 annually on average for each CAH (141,292 inpatient hospital stays × 0.50 hours of a physician's/APRN's/PA's/dietitian's/nutrition professional's time × $70 per hourly cost difference + 650 CAHs) for a total annual savings of approximately $5 million. We note that these estimates exclude some categories of cost increases (for example, internal CAH meetings to plan changes and the time and other costs of training physicians, dietitians/nutrition professionals, and other staff on the new dietary ordering procedures). Even more importantly, this estimate does not account for barriers, other than federal regulation, to RDs receiving ordering privileges; Weil et al. (2008) provide evidence on the existence of such barriers, which would likely prevent at least some of these cost savings from being realized.[4] If such barriers are not relevant, then there is another adjustment that would need to be made to the calculation. Specifically, the dietitian wage estimate would need to be revised because the May 2014 wage data do not account for the increase in demand for dietitians we projected would result from the hospital burden reduction rule finalized that same month. For the savings estimates accompanying that rule to be achieved would require at least 6.7 percent of the dietitian FTEs in the U.S. to be newly allocated to providing nutrition services to hospital patients.[5] This shift in activity entails a substantial movement along the supply curve for dietitian labor, thus raising the dietitian wage and reducing the cost savings estimated with the method outlined. For these reasons, as well as our lack of data on CAH outpatient visits for nutritional services and the impact that the proposed regulatory changes might have on hospital costs in this area, we present the $10 million estimate for discussion purposes only and do not include it in the summary estimates of costs and cost savings attributable to the proposed rule.

§ 485.640 Condition of participation: Infection prevention and control and antibiotic stewardship programs

As we proposed for hospitals, we are also proposing new infection prevention and control and antibiotic stewardship requirements for CAHs. The infection control requirements for CAHs have remained unchanged since 1997. We are adding a new infection prevention and control (as well as antibiotic stewardship) CoP for CAHs because the existing standards for infection control do not reflect the current nationally recognized practices for the prevention and elimination of healthcare-associated infections.

Infection Prevention and Control

Each CAH would be required to review their current infection control program and compare it to the new requirements contained in this section. After performing this comparison, each CAH would be required to revise their program so that it complied with the requirements in this section. Based on our experience with CAHs, we believe that a physician and a nurse on the infection control team would conduct this review and revision of the program. We believe both the physician and the nurse would spend 16 hours each for a total of 32 hours. Physicians earn an average of $187 an hour. Nurses earn an average salary of $68 an hour. Thus, to ensure their infection control program complied with the requirements in this section, we estimate that each CAH would require 32 burden hours (16 hours for a physician and 16 hours for a nurse = 32 burden hours) at a cost of $4,080 ($2,992 ($187 an hour for a physician × 16 burden hours = $2,292) + $1,088($68 an hour for a nurse × 16 burden hours = $1,088) = $4,080 estimated cost). Based on the estimate, for all 1,300 CAHs, complying with this requirement would require 41,600 burden hours (32 hours for each CAH × 1,300 CAHs = 41,600 burden hours) at a one-time cost of approximately $5 million ($4,080 for each CAH × 1,300 CAHs = $5,304,000 estimated cost).

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[4] Weil, Sharon D., et al. "Registered Dietitian Prescriptive Practices in Hospitals." *Journal of the American Dietetic Association* 108:1688–1692. October 2008.

[5] BLS data show employment of 59,490 dietitians, with a mean hourly wage of $27.62. Assuming all dietitians are employed full-time (2,080 hours annually) yields a total sector value of $3.4 billion, or $6.8 billion when doubled to account for fringe benefits and overhead. For the May, 2014, final rule, we estimated $459 million of loaded wage savings associated with dietary ordering switching from physicians, nurse practitioners and physician assistants to lower-paid dietitians. Thus the relevant portion of the savings estimate equals roughly 6.7 percent (= $459 million + $6.8 billion) of the sector as a whole—and would exceed 6.7 percent, to the extent that some current dietitian positions are part-time.

Antibiotic Stewardship

Similarly, we believe that the proposed requirements for a CAH to have an active antibiotic stewardship program, and for its organization and policies, would constitute additional regulatory burden. However, we believe that the burden of implementing and maintaining an AS program includes the salaries of the qualified personnel needed to establish and manage such a CAH program. Our review of the literature, consultations with CDC, and experience with CAHs suggests that the establishment and maintenance of a CAH antibiotic stewardship program as proposed here, for a statutorily mandated 25-bed CAH, would require the services of a physician (preferably an infectious disease physician or physician with training in antibiotic stewardship) and a clinical pharmacist (preferably with training in infectious diseases or antibiotic stewardship), and also a network data analyst at the following proportions of full-time employee salaries respectively: 0.05, 0.10, and 0.025. We believe that these personnel costs would constitute a real burden for these proposed requirements. To determine the cost of this burden, we have added the proportion of full-time salaries required of a physician, a clinical pharmacist, and a network analyst. Based on these assumptions, the total annual cost for a CAH to establish and maintain an antibiotic stewardship program would be $44,800 (($187 per hour × 0.05 × 2,000 hours per year = $18,700 for a physician) + ($113 per hour × 0.10 × 2,000 hours per year = $22,600 for a clinical pharmacist) + ($70 per hour × 0.025 × 2,000 hours per year = $3,500 for a network data analyst)). According to CDC, 97 of 397 (or approximately 24 percent) of hospitals with fewer than 25 beds reported having an AS program that meets all of the CDC's core elements. However, we have no way of determing from the data how many of these less-than-25-bed hospitals are actually CAHs. For the purposes of this burden estimate, we assume that 24 percent of the total 1,328 CAHs (or approximately 319 CAHs) have already implemented an AS program. Therefore, 1,009 CAHs have not implemented an AS program. The total annual cost for these CAHs (× 1,009) would be approximately $45 million.

However, we believe that the estimated costs of an AS program would be somewhat offset by the savings that a CAH would achieve through such a program. The most obvious savings would be from decreased inappropriate antibiotic use leading to overall decreased drug costs for a CAH. Our review of the literature showed significant savings in this area, with annual savings proportional to bed size of the hospital. Reported annual savings ranged from $27,917 for a 12-bed medical/surgical intensive care unit to $2.1 million for an 880-bed academic medical center. We specifically note the $177,000 in annual drug cost savings achieved by a 120-bed community hospital with its AS program (LaRocco 2003, CID "Concurrent antibiotic review programs-a role for infectious diseases specialists at small community CAHs") and would use that as the basis to calculate average annual cost savings for a 25-bed CAH ($177,000 annual savings ÷ 120 beds = $1,475 annual cost savings per bed) at $36,875 per CAH ($1,475 annual cost savings × 25 beds). Using this assumption, we believe that the annual drug cost savings for 1,009 CAHs under this proposed rule would be approximately $37 million (1,009 CAHs × $36,875 in drug cost savings).

In addition to these savings, we also believe that the proposed requirement for an AS program would assist CAHs in significantly reducing rates of CDI and the attendant costs. Based on an AS program model developed by the CDC, a CAH combined IC/AS program with an average effectiveness rate of 50 percent would reduce the number of CDIs among Medicare beneficiaries annually by 101,000. However, we do not have a reliable means to distinguish this cost savings for CAHs from the cost savings for hospitals that we have already calculated.

2. Effects on Small Entities

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that the great majority of the providers that would be affected by CMS rules are small entities as that term is used in the RFA. The great majority of hospitals and most other healthcare providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business. Accordingly, the usual practice of HHS is to treat all providers and suppliers as small entities in analyzing the effects of our rules.

This proposed rule would cost affected entities approximately $0.6 to 1.1 billion a year, largely, but not entirely, offset by savings. While this is a large amount in total, the average cost per affected hospital is less than one half million dollars per year. Although the overall magnitude of the paperwork, staffing, and related cost reductions to hospitals and CAHs under this rule is economically significant, these savings are likely to be a fraction of one percent of total hospital costs. Total national inpatient hospital spending is approximately nine hundred billion dollars a year, or an average of about $150 million per hospital, and our primary estimate of the net (though possibly not the gross) effect of these proposals on increasing hospital costs is less than $1 billion annually.

Under HHS guidelines for RFA, actions that do not negatively affect costs or revenues by more than 3 percent a year are not economically significant. We believe that no hospitals of any size will be negatively affected to this degree. Accordingly, we have determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, and certify that an Initial RFA is not required. Notwithstanding this conclusion, we believe that this RIA and the preamble as a whole meet the requirements of the RFA for such an analysis.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. For the preceding reasons, we have determined that this proposed rule will lead to net savings and will therefore not have a significant negative impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2016, that is approximately $144 million. This proposed rule does not contain any mandates.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that would impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule would not have a substantial direct effect on State or local governments, preempt States, or otherwise have a Federalism implication.

D. Alternatives Considered

As we stated, CMS is aware, through conversations with stakeholders and federal partners, and as a result of internal evaluation and research, of outstanding concerns about the CoPs for hospitals and CAHs, despite recent revisions. This subset of the universe of standards is the focus of this proposed rule.

One alternative we did consider was combining the infection prevention and control leader position with that of the antibiotic stewardship leader position. While this would certainly reduce the costs for hospitals by eliminating one of these positions, we also believe that it might reduce the overall effectiveness of the program and, thus, the overall societal benefits that might be achieved. The skills needed to lead each program are different. Infection prevention programs are often led by nursing staff who do not prescribe antibiotics. Antibiotic stewardship programs are led by physicians and pharmacists who have direct knowledge and experience with antibiotic prescribing. For these reasons, we decided to propose the requirement as it is contained in this rule.

For all of the proposed provisions, we considered not making these changes. Ultimately, based on our analysis of these issues and for the reasons stated in this preamble, we believe that it is best to propose changes at this time. We welcome comments on whether we properly selected the best candidates for change, and welcome suggestions for additional reform candidates from the entire body of CoPs.

E. Accounting Statement and Table

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), we have prepared an accounting statement.

TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED COSTS AND BENEFITS

[$ In millions]

Category	Estimates	Units		
		Year dollar	Discount rate	Period covered
Benefits				
Annualized	1,057	2015	7%	2016–2020
Monetized ($million/year)	1,057	2015	3%	2016–2020
Qualitative	Potential Reductions in morbidity and mortality for hospital and CAH patients			
Costs *				
Annualized	748 to 1,248	2015	7%	2016–2020
Monetized ($million/year)	748 to 1,248	2015	3%	2016–2020

F. Conclusion

The impact of this proposed rule lies primarily with the estimated costs (approximately $773 million to $1.1 billion) of revising the hospital and CAH infection control CoPs, including the new requirements for antibiotic stewardship programs. However, these costs may be more than offset by the savings, and the overall benefits to patients, that would be achieved with these changes (net savings to society of up to $284 million). The analysis, together with the remainder of this preamble, provides a Regulatory Impact Analysis and an Initial Regulatory Flexibility Analysis.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 482

Grant programs—health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

■ 1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102, 1871 and 1881 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr), unless otherwise noted.

■ 2. Section 482.13 is amended by revising paragraphs (d)(2), (e)(5), (e)(8)(ii), (e)(10), (e)(11), (e)(12)(i), (e)(14), and (g)(4)(ii) and by adding paragraph (i) to read as follows:

§ 482.13 Condition of participation: Patient's rights.

* * * * *

(d) * * *

(2) The patient has the right to access their medical records, upon an oral or written request, in the form and format requested by the individual, if it is readily producible in such form and format (including in an electronic form or format when such medical records are maintained electronically); or, if not, in a readable hard copy form or such other form and format as agreed to by the facility and the individual, including current medical records, within a reasonable time frame. The hospital must not frustrate the legitimate efforts of individuals to gain access to their own medical records and

must actively seek to meet these requests as quickly as its record keeping system permits.

(e) * * *

(5) The use of restraint or seclusion must be in accordance with the order of a physician or other licensed practitioner who is responsible for the care of the patient and authorized to order restraint or seclusion by hospital policy in accordance with State law.

* * * * *

(8) * * *

(ii) After 24 hours, before writing a new order for the use of restraint or seclusion for the management of violent or self-destructive behavior, a physician or other licensed practitioner who is responsible for the care of the patient and authorized to order restraint or seclusion by hospital policy in accordance with State law must see and assess the patient.

* * * * *

(10) The condition of the patient who is restrained or secluded must be monitored by a physician, other licensed practitioner, or trained staff that have completed the training criteria specified in paragraph (f) of this section at an interval determined by hospital policy.

(11) Physician and other licensed practitioner training requirements must be specified in hospital policy. At a minimum, physicians and other licensed practitioners authorized to order restraint or seclusion by hospital policy in accordance with State law must have a working knowledge of hospital policy regarding the use of restraint or seclusion.

(12) * * *

(i) By a—

(A) Physician or other licensed practitioner.

(B) Registered nurse who has been trained in accordance with the requirements specified in paragraph (f) of this section.

* * * * *

(14) If the face-to-face evaluation specified in paragraph (e)(12) of this section is conducted by a trained registered nurse, the trained registered nurse must consult the attending physician or other licensed practitioner who is responsible for the care of the patient as soon as possible after the completion of the 1–hour face-to-face evaluation.

* * * * *

(g) * * *

(4) * * *

(ii) Each entry must document the patient's name, date of birth, date of death, name of attending physician or other licensed practitioner who is responsible for the care of the patient, medical record number, and primary diagnosis(es).

* * * * *

(i) *Standard: Non-discrimination.* A hospital must meet the following requirements:

(1) Not discriminate on the basis of race, color, religion, national origin, sex (including gender identity), sexual orientation, age, or disability.

(2) Establish and implement a written policy prohibiting discrimination on the basis of race, color, religion, national origin, sex (including gender identity), sexual orientation, age, or disability.

(3) Inform each patient (and/or support person, where appropriate), in a language he or she can understand, of his or her right to be free from discrimination against them and how to file a complaint if they encounter discrimination when he or she is informed of his or her other rights under this section.

■ 3. Section 482.21 is amended by revising paragraph (b)(1) to read as follows:

§ 482.21 Condition of participation: Quality assessment and performance improvement program.

* * * * *

(b) * * *

(1) The program must incorporate quality indicator data including patient care data, and other relevant data such as data submitted to or received from Medicare quality reporting and quality performance programs, including but not limited to data related to hospital readmissions and hospital-acquired conditions.

* * * * *

■ 4. Section 482.23 is amended by revising paragraphs (b) introductory text, (b)(4) and (6), (c)(1) introductory text, and (c)(3), and by adding paragraph (b)(7) to read as follows:

§ 482.23 Condition of participation: Nursing services.

* * * * *

(b) *Standard: Staffing and delivery of care.* The nursing service must have adequate numbers of licensed registered nurses, licensed practical (vocational) nurses, and other personnel to provide nursing care to all patients as needed. There must be supervisory and staff personnel for each department or nursing unit to ensure, when needed, the immediate availability of a registered nurse for the care of any patient.

* * * * *

(4) The hospital must ensure that the nursing staff develops, and keeps current for each patient, a nursing care plan that reflects the patient's goals and the nursing care to be provided to meet the patient's needs. The nursing care plan may be part of an interdisciplinary care plan.

* * * * *

(6) All licensed nurses who provide services in the hospital must adhere to the policies and procedures of the hospital. The director of nursing service must provide for the adequate supervision and evaluation of the clinical activities of all nursing personnel which occur within the responsibility of the nursing service, regardless of the mechanism through which those personnel are providing services (that is, hospital employee, contract, lease, other agreement, or volunteer).

(7) The hospital must have policies and procedures in place establishing which outpatient departments, if any, are not required under hospital policy to have a registered nurse present. The policies and procedures must:

(i) Establish the criteria such outpatient departments must meet, taking into account the types of services delivered, the general level of acuity of patients served by the department, and the established standards of practice for the services delivered;

(ii) Establish alternative staffing plans;

(iii) Be approved by the medical staff;

(iv) Be reviewed at least once every three years.

(c) * * *

(1) Drugs and biologicals must be prepared and administered in accordance with Federal and State laws, the orders of the practitioner or practitioners responsible for the patient's care, and accepted standards of practice.

* * * * *

(3) With the exception of influenza and pneumococcal vaccines, which may be administered per physician-approved hospital policy after an assessment of contraindications, orders for drugs and biologicals must be documented and signed by a practitioner who is authorized to write orders in accordance with State law and hospital policy, and who is responsible for the care of the patient.

(i) If verbal orders are used, they are to be used infrequently.

(ii) When verbal orders are used, they must only be accepted by persons who are authorized to do so by hospital policy and procedures consistent with Federal and State law.

(iii) Orders for drugs and biologicals may be documented and signed by other practitioners only if such practitioners are acting in accordance with State law, including scope-of-practice laws, hospital policies, and medical staff bylaws, rules, and regulations.

* * * * *

■ 5. Section 482.24 is amended by revising paragraphs (c) introductory text and (c)(4)(ii), (iv), (vi), (vii), and (viii) to read as follows:

§ 482.24 Condition of participation: Medical record services.

* * * * *

(c) *Standard: Content of record.* The medical record must contain information to justify all admissions and continued hospitalizations, support the diagnoses, describe the patient's progress and responses to medications and services, and document all inpatient stays and outpatient visits to reflect all services provided to the patient.

* * * * *

(4) * * *

(ii) All diagnoses specific to each inpatient stay and outpatient visit.

* * * * *

(iv) Documentation of complications, hospital-acquired conditions, healthcare-associated infections, and adverse reactions to drugs and anesthesia.

* * * * *

(vi) All practitioners' progress notes and orders, nursing notes, reports of treatment, interventions, responses to interventions, medication records, radiology and laboratory reports, and vital signs and other information necessary to monitor the patient's condition and to reflect all services provided to the patient.

(vii) Discharge and transfer summaries with outcomes of all hospitalizations, disposition of cases, and provisions for follow-up care for all inpatient and outpatient visits to reflect the scope of all services received by the patient.

(viii) Final diagnoses with completion of medical records within 30 days following all inpatient stays, and within 7 days following all outpatient visits.

■ 6. Section 482.27 is amended by revising paragraph (b)(7) and removing paragraph (b)(11) to read as follows:

§ 482.27 Condition of participation: Laboratory services.

* * * * *

(b) * * *

(7) *Timeframe for notification.* For notifications resulting from donors tested on or after February 20, 2008 as set forth at 21 CFR 610.46 and 610.47 the notification effort begins when the blood collecting establishment notifies the hospital that it received potentially HIV or HCV infectious blood and blood components. The hospital must make reasonable attempts to give notification over a period of 12 weeks unless—

(i) The patient is located and notified; or

(ii) The hospital is unable to locate the patient and documents in the patient's medical record the extenuating circumstances beyond the hospital's control that caused the notification timeframe to exceed 12 weeks.

* * * * *

■ 7. Section 482.42 is revised to read as follows:

§ 482.42 Condition of participation: Infection prevention and control and antibiotic stewardship programs.

The hospital must have active hospital-wide programs for the surveillance, prevention, and control of HAIs and other infectious diseases, and for the optimization of antibiotic use through stewardship. The programs must demonstrate adherence to nationally recognized infection prevention and control guidelines, as well as best practices for improving antibiotic use, where applicable, for reducing the development and transmission of HAIs and antibiotic-resistant organisms. Infection prevention and control problems and antibiotic use issues identified in the programs must be addressed in collaboration with the hospital-wide quality assessment and performance improvement (QAPI) program.

(a) *Standard: Infection prevention and control program organization and policies.* The hospital must ensure all of the following:

(1) An individual (or individuals), who are qualified through education, training, experience, or certification in infection prevention and control, are appointed by the governing body as the infection preventionist(s)/infection control professional(s) responsible for the infection prevention and control program and that the appointment is based on the recommendations of medical staff leadership and nursing leadership.

(2) The hospital infection prevention and control program, as documented in its policies and procedures, employs methods for preventing and controlling the transmission of infections within the hospital and between the hospital and other institutions and settings.

(3) The infection prevention and control program includes surveillance, prevention, and control of HAIs, including maintaining a clean and sanitary environment to avoid sources and transmission of infection, and addresses any infection control issues identified by public health authorities.

(4) The infection prevention and control program reflects the scope and complexity of the hospital services provided.

(b) *Standard: Antibiotic stewardship program organization and policies.* The hospital must ensure all of the following:

(1) An individual, who is qualified through education, training, or experience in infectious diseases and/or antibiotic stewardship, is appointed by the governing body as the leader of the antibiotic stewardship program and that the appointment is based on the recommendations of medical staff leadership and pharmacy leadership.

(2) An active hospital-wide antibiotic stewardship program must:

(i) Demonstrate coordination among all components of the hospital responsible for antibiotic use and resistance, including, but not limited to, the infection prevention and control program, the QAPI program, the medical staff, nursing services, and pharmacy services.

(ii) Document the evidence-based use of antibiotics in all departments and services of the hospital.

(iii) Demonstrate improvements, including sustained improvements, in proper antibiotic use, such as through reductions in CDI and antibiotic resistance in all departments and services of the hospital.

(3) The antibiotic stewardship program adheres to nationally recognized guidelines, as well as best practices, for improving antibiotic use.

(4) The antibiotic stewardship program reflects the scope and complexity of the hospital services provided.

(c) *Standard: Leadership responsibilities.* (1) The governing body must ensure all of the following:

(i) Systems are in place and operational for the tracking of all infection surveillance, prevention, and control, and antibiotic use activities, in order to demonstrate the implementation, success, and sustainability of such activities.

(ii) All HAIs and other infectious diseases identified by the infection prevention and control program as well as antibiotic use issues identified by the antibiotic stewardship program are addressed in collaboration with hospital QAPI leadership.

(2) The infection preventionist(s)/infection control professional(s) are responsible for:

(i) The development and implementation of hospital-wide infection surveillance, prevention, and control policies and procedures that adhere to nationally recognized guidelines.

(ii) All documentation, written or electronic, of the infection prevention and control program and its surveillance, prevention, and control activities.

(iii) Communication and collaboration with the hospital's QAPI program on infection prevention and control issues.

(iv) Competency-based training and education of hospital personnel and staff, including medical staff, and, as applicable, personnel providing contracted services in the hospital, on the practical applications of infection prevention and control guidelines, policies, and procedures.

(v) The prevention and control of HAIs, including auditing of adherence to infection prevention and control policies and procedures by hospital personnel.

(vi) Communication and collaboration with the antibiotic stewardship program.

(3) The leader of the antibiotic stewardship program is responsible for:

(i) The development and implementation of a hospital-wide antibiotic stewardship program, based on nationally recognized guidelines, to monitor and improve the use of antibiotics.

(ii) All documentation, written or electronic, of antibiotic stewardship program activities.

(iii) Communication and collaboration with medical staff, nursing, and pharmacy leadership, as well as the hospital's infection prevention and control and QAPI programs, on antibiotic use issues.

(iv) Competency-based training and education of hospital personnel and staff, including medical staff, and, as applicable, personnel providing contracted services in the hospital, on the practical applications of antibiotic stewardship guidelines, policies, and procedures.

■ 8. Section 482.58 is amended by revising paragraph (b)(6) to read as follows:

§ 482.58 Special requirements for hospital providers of long-term care services ("swing-beds").

* * * * *

(b) * * *

(6) Discharge summary (§ 483.20(l)).

* * * * *

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

■ 9. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

§ 485.627 [Amended]

■ 10. Section 485.627 is amended by removing paragraph (b)(1) and redesignating paragraphs (b)(2) and (3) as paragraphs (b)(1) and (2), respectively.

■ 11. Section 485.631 is amended by adding paragraph (d) to read as follows:

§ 485.631 Condition of participation: Staffing and staff responsibilities.

* * * * *

(d) *Standard: Periodic review of clinical privileges and performance.* The CAH requires that—

(1) The quality and appropriateness of the diagnosis and treatment furnished by nurse practitioners, clinical nurse specialist, and physician assistants at the CAH are evaluated by a member of the CAH staff who is a doctor of medicine or osteopathy or by another doctor of medicine or osteopathy under contract with the CAH.

(2) The quality and appropriateness of the diagnosis and treatment furnished by doctors of medicine or osteopathy at the CAH are evaluated by—

(i) One hospital that is a member of the network, when applicable;

(ii) One Quality Improvement Organization (QIO) or equivalent entity;

(iii) One other appropriate and qualified entity identified in the State rural health care plan;

(iv) In the case of distant-site physicians and practitioners providing telemedicine services to the CAH's patient under an agreement between the CAH and a distant-site hospital, the distant-site hospital; or

(v) In the case of distant-site physicians and practitioners providing telemedicine services to the CAH's patients under a written agreement between the CAH and a distant-site telemedicine entity, one of the entities listed in paragraphs (d)(2)(i) through (iii) of this section.

(3) The CAH staff consider the findings of the evaluation and make the necessary changes as specified in paragraphs (b) through (d) of this section.

■ 12. Section 485.635 is amended by removing paragraph (a)(3)(vi), redesignating paragraph (a)(3)(vii) as paragraph (a)(3)(vi), revising newly designated paragraph (a)(3)(vi), and adding paragraph (g) to read as follows:

§ 485.635 Condition of participation: Provision of services.

(a) * * *

(3) * * *

(vi) Procedures that ensure that the nutritional needs of inpatients are met in accordance with recognized dietary practices. All patient diets, including therapeutic diets, must be ordered by the practitioner responsible for the care of the patients or by a qualified dietitian or qualified nutrition professional as authorized by the medical staff in accordance with State law governing dietitians and nutrition professionals and that the requirement of § 483.25(i) of this chapter is met with respect to inpatients receiving post CAH SNF care.

* * * * *

(g) *Standard: Non-discrimination.* A CAH must meet the following requirements:

(1) Not discriminate on the basis of race, color, religion, national origin, sex (including gender identity), sexual orientation, age, or disability.

(2) Establish and implement a written policy prohibiting discrimination on the basis of race, color, religion, national origin, sex (including gender identity), sexual orientation, age, or disability.

(3) Inform each patient (and/or support person, where appropriate), in a language he or she can understand, of his or her right to be free from discrimination against them and how to file a complaint if they encounter discrimination.

■ 13. Add § 485.640 to read as follows:

§ 485.640 Condition of participation: Infection prevention and control and antibiotic stewardship programs.

The CAH must have active facility-wide programs, for the surveillance, prevention, and control of HAIs and other infectious diseases and for the optimization of antibiotic use through stewardship. The programs must demonstrate adherence to nationally recognized infection prevention and control guidelines, as well as best practices for improving antibiotic use, where applicable, for reducing the development and transmission of HAIs and antibiotic-resistant organisms. Infection prevention and control problems and antibiotic use issues identified in the programs must be addressed in coordination with the facility-wide quality assessment and performance improvement (QAPI) program.

(a) *Standard: Infection prevention and control program organization and policies.* The CAH must ensure all of the following:

(1) An individual (or individuals), who are qualified through education, training, experience, or certification in infection prevention and control, are appointed by the governing body, or responsible individual, as the infection preventionist(s)/infection control professional(s) responsible for the

infection prevention and control program and that the appointment is based on the recommendations of medical staff leadership and nursing leadership.

(2) The infection prevention and control program, as documented in its policies and procedures, employs methods for preventing and controlling the transmission of infections within the CAH and between the CAH and other healthcare settings.

(3) The infection prevention and control includes surveillance, prevention, and control of HAIs, including maintaining a clean and sanitary environment to avoid sources and transmission of infection, and that the program also addresses any infection control issues identified by public health authorities.

(4) The infection prevention and control program reflects the scope and complexity of the CAH services provided.

(b) *Standard: Antibiotic stewardship program organization and policies.* The CAH must ensure that:

(1) An individual, who is qualified through education, training, or experience in infectious diseases and/or antibiotic stewardship, is appointed by the governing body, or responsible individual, as the leader of the antibiotic stewardship program and that the appointment is based on the recommendations of medical staff leadership and pharmacy leadership.

(2) An active facility-wide antibiotic stewardship program must:

(i) Demonstrate coordination among all components of the CAH responsible for antibiotic use and resistance, including, but not limited to, the infection prevention and control program, the QAPI program, the medical staff, nursing services, and pharmacy services.

(ii) Document the evidence-based use of antibiotics in all departments and services of the CAH.

(iii) Demonstrate improvements, including sustained improvements, in proper antibiotic use, such as through reductions in CDI and antibiotic resistance in all departments and services of the CAH.

(3) The antibiotic stewardship program adheres to nationally recognized guidelines, as well as best practices, for improving antibiotic use.

(4) The antibiotic stewardship program reflects the scope and complexity of the CAH services provided.

(c) *Standard: Leadership responsibilities.* (1) The governing body, or responsible individual, must ensure all of the following:

(i) Systems are in place and operational for the tracking of all infection surveillance, prevention and control, and antibiotic use activities, in order to demonstrate the implementation, success, and sustainability of such activities.

(ii) All HAIs and other infectious diseases identified by the infection prevention and control program as well as antibiotic use issues identified by the antibiotic stewardship program are addressed in collaboration with the CAH's QAPI leadership.

(2) The infection prevention and control professional(s) are responsible for:

(i) The development and implementation of facility-wide infection surveillance, prevention, and control policies and procedures that adhere to nationally recognized guidelines.

(ii) All documentation, written or electronic, of the infection prevention and control program and its surveillance, prevention, and control activities.

(iii) Communication and collaboration with the CAH's QAPI program on infection prevention and control issues.

(iv) Competency-based training and education of CAH personnel and staff, including medical staff, and, as applicable, personnel providing contracted services in the CAH, on the practical applications of infection prevention and control guidelines, policies and procedures.

(v) The prevention and control of HAIs, including auditing of adherence to infection prevention and control policies and procedures by CAH personnel.

(vi) Communication and collaboration with the antibiotic stewardship program.

(3) The leader of the antibiotic stewardship program is responsible for:

(i) The development and implementation of a facility-wide antibiotic stewardship program, based on nationally recognized guidelines, to monitor and improve the use of antibiotics.

(ii) All documentation, written or electronic, of antibiotic stewardship program activities.

(iii) Communication and collaboration with medical staff, nursing, and pharmacy leadership, as well as the CAH's infection prevention and control and QAPI programs, on antibiotic use issues.

(iv) Competency-based training and education of CAH personnel and staff, including medical staff, and, as applicable, personnel providing contracted services in the CAHs, on the practical applications of antibiotic stewardship guidelines, policies, and procedures.

■ 14. Section 485.641 is revised to read as follows:

§ 485.641 Condition of participation: Quality assessment and performance improvement program.

The CAH must develop, implement, and maintain an effective, ongoing, CAH-wide, data-driven quality assessment and performance improvement (QAPI) program. The CAH must maintain and demonstrate evidence of the effectiveness of its QAPI program.

(a) *Definitions.* For the purposes of this section:

Adverse event means an untoward, undesirable, and usually unanticipated event that causes death or serious injury or the risk thereof.

Error means the failure of a planned action to be completed as intended or the use of a wrong plan to achieve an aim. Errors can include problems in practice, products, procedures, and systems; and

Medical error means an error that occurs in the delivery of healthcare services.

(b) *Standard: QAPI program design and scope.* The CAH's QAPI program must:

(1) Be appropriate for the complexity of the CAH's organization and services provided.

(2) Be ongoing and comprehensive.

(3) Involve all departments of the CAH and services (including those services furnished under contract or arrangement).

(4) Use objective measures to evaluate its organizational processes, functions and services.

(5) Address outcome indicators related to improved health outcomes and the prevention and reduction of medical errors, adverse events, CAH-acquired conditions, and transitions of care, including readmissions.

(c) *Standard: Governance and leadership.* The CAH's governing body or responsible individual is ultimately responsible for the CAH's QAPI program and is responsible and accountable for ensuring that the QAPI program meets the requirements of paragraph (b) of this section and that:

(1) Clear expectations for safety are communicated, implemented, and followed throughout the CAH.

(2) The QAPI efforts address priorities for improved quality of care and patient safety.

(3) All improvement actions are evaluated and modified as needed.

(4) Adequate resources are allocated for measuring, assessing, improving,

and sustaining the CAH's performance and reducing risk to patients.

(5) The determination of the number of distinct improvement projects is made annually.

(6) The CAH develops and implements policies and procedures for QAPI that address what actions the CAH staff should take to prevent and report unsafe patient care practices, medical errors, and adverse events.

(d) *Standard: Program activities.* For each of the areas listed in paragraph (b) and (c) of this section, the CAH must:

(1) Focus on measures related to improved health outcomes that are shown to be predictive of desired patient outcomes.

(2) Use the measures to analyze and track its performance.

(3) Set priorities for performance improvement, considering either high-volume, high-risk services, or problem-prone areas.

(e) *Performance improvement projects.* As part of its QAPI program, the CAH must:

(1) Conduct performance improvement projects. The number and scope of the distinct improvement projects conducted must be proportional to the scope and complexity of the CAH's services and operations.

(2) The CAH maintains and demonstrates written or electronic evidence and documentation of its QAPI projects.

(f) *Standard: Program data collection and analysis.* (1) The program must incorporate quality indicator data including patient care data, and other relevant data, such as data submitted to or received from national quality reporting and quality performance programs including but not limited to data related to hospital readmissions and hospital-acquired conditions.

(2) The CAH must use the data collected to:

(i) Monitor the effectiveness and safety of services provided and quality of care.

(ii) Identify opportunities for improvement and changes that will lead to improvement.

(3) The frequency and detail of data collection must be approved by the CAH's governing body or responsible individual.

■ 15. Section 485.645 is amended by revising the introductory text to read as follows:

§ 485.645 Special requirements for CAH providers of long-term care services ("swing-beds").

A CAH must meet the following requirements in order to be granted an approval from CMS to provide post-CAH SNF care, as specified in § 409.30 of this chapter, and to be paid for SNF-level services, in accordance with paragraph (c) of this section.

* * * * *

Dated: January 28, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: May 11, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

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Part V

Department of Defense

Defense Acquisition Regulations System

48 CFR Parts 212, 227, and 252
Defense Federal Acquisition Regulation Supplement: Rights in Technical Data and Validation of Proprietary Data Restrictions (DFARS Case 2012–D022); Proposed Rule

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 227, and 252

[Docket DARS–2016–0017]

RIN 0750–AI95

Defense Federal Acquisition Regulation Supplement: Rights in Technical Data and Validation of Proprietary Data Restrictions (DFARS Case 2012–D022)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2012 that revises the sections of title 10 of the United States Code (U.S.C.) that address technical data rights and validation of proprietary data restrictions.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 14, 2016, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2012–D022, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2012–D022" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2012–D022." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2012–D022" on your attached document.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2012–D022 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 815 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012, which—

- Adds special provisions for handling technical data that are necessary for segregation and reintegration activities;
- Codifies and revises the policies and procedures regarding deferred ordering of technical data necessary to support DoD major systems or subsystems, weapon systems, or noncommercial items or processes;
- Expands the period in which DoD can challenge an asserted restriction on technical data from 3 years to 6 years;
- Rescinds changes to 10 U.S.C. 2320 from the NDAA for FY 2011; and
- Codifies Government purpose rights as the default rights for technical data related to technology developed with mixed funding.

In accordance with the statutory changes, this rule provides better clarity, extended time periods, and enhanced rights for the Government to require delivery of (including through deferred ordering), and to assert rights in, technical data and computer software that are developed in whole or in part with Government funding or that are needed for segregation and reintegration activities, including under commercial items authorities. The rule also provides extended time periods and enhanced rights for the Government to challenge proprietary data legends and markings in order to enable competitive follow-on acquisitions for Government-funded items or processes. However, the rule affirmatively states that there is no requirement in the revised deferred ordering scheme for the contractor to retain the technical data or computer software beyond a reasonable time. While the anticipated costs associated with this rule are not quantifiable in dollar amounts, DoD anticipates that any such impact will be outweighed by the expected benefits of this rule.

II. Discussion and Analysis

A. Scope of the New Requirements—Applicability to Computer Software and to Commercial Technologies

Section 815 revised 10 U.S.C. 2320 and 2321, which cover only technical data (both commercial technical data and noncommercial technical data), and do not expressly cover computer software, which is expressly excluded from the definition of "technical data." However, it is longstanding Federal and DoD policy and practice to apply the same or analogous requirements to computer software. Many issues are common to both technical data and computer software. Accordingly, conformity of coverage between technical data and computer software is desirable.

Further, it is also longstanding policy and practice to recognize that acquisition of technical data or computer software that is, or is related to, commercial technologies involves special considerations that may require adaptation of the policies and practices otherwise applicable to noncommercial technologies. For example, the DFARS coverage for commercial technical data at 227.7102 implements the statutory requirements as applicable to commercial technical data, but otherwise follows the overarching Federal and DoD policy for acquisition of commercial technical data and commercial computer software: That the Government will generally acquire the same deliverables, and the same associated license rights, that are customarily provided to the public, as long as those customary practices are consistent with Federal law and satisfy the agency's needs. For commercial computer software, the DFARS implementation at 227.7202 is even more closely aligned with that overarching policy, and minimizes the extension of DoD-specific requirements derived from the technical data statutes to only a few limited principles, such as allowing DoD to require delivery of computer software documenting modifications made at Government expense to meet the requirements of a Government solicitation (see 227.7202–1(c)(1)).

Accordingly, the implementation of these new statutory authorities also follows these general guidelines, applying and adapting the technical data-specific statutory revisions to computer software as appropriate. The specific determinations regarding such applicability and adaptations are discussed on a case-by-case basis throughout this preamble.

B. Segregation or Reintegration Data

Section 815(a)(1) amended 10 U.S.C. 2320(a)(2)(D)(i) to add a new (fourth) exception to the restriction on sharing outside of DoD any technical data relating to an item or process developed exclusively at private expense. The new exception is framed in the same manner as the three other preexisting exceptions: They are defined by a specific activity or purpose for which the release is necessary (10 U.S.C. 2320(a)(2)(D)(i)(I)–(IV)); the recipient must be subject to a prohibition on any further use or release of the information (10 U.S.C. 2320(a)(2)(D)(ii)); and the person asserting restrictions on the technical data (hereafter "the data owner") must be notified of the release or use (10 U.S.C. 2320(a)(2)(D)(iii)). The new exception covers a new purpose or activity, when the release or use "is necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes."

C. Approach to Implementation

In the case of technical data, the mandatory statutory revisions are inserted into the baseline DFARS coverage where the rest of the statutory scheme has been implemented. More specifically, revisions are inserted in the context of commercial technical data at DFARS 227.7102–2, and associated clause at 252.227–7015(b)(2)(ii); and for noncommercial technical data in the context of limited rights, as described at DFARS 227.7103–5(c)(2), and defined at DFARS 252.227–7013(a)(14) and 252.227–7018(a)(15).

Regarding computer software, the statutory scheme recognizing certain limited exceptions to the restriction on disclosure of information outside the Government has been extended to noncommercial computer software in the context of the restricted rights, defined at DFARS 252.227–7014(a)(15). Accordingly, the new exception authorizing releases for segregation and reintegration activities has been applied to noncommercial computer software by revising the definition of "restricted rights." Adding this additional exception also provided an opportunity to clarify and streamline the existing baseline list of such exceptions that have been added to restricted rights over the years, and during that process the definition had become unnecessarily long and complex. The definition of "restricted rights" has thus been clarified and streamlined, with all of the special circumstances in which releases outside the Government are authorized now consolidated under subparagraph (v)(A), while retaining all of the substantive and procedural protections for each such circumstance at subparagraphs (v)(B) through (v)(E).

In order to streamline the regulations, DoD defined a new term "segregation or reintegration data" to mean data that otherwise meets all of the statutory criteria (see the definition at DFARS 227.001, and in paragraph (a) of the associated clauses at 252.227–7013, –7014, –7015, –7018, and new –7029(a)). Creating such a defined term also allows the DFARS implementation to proactively address a major concern expressed by industry and academia in various forums after the enactment of section 815; namely, that the new statutory scheme does not provide a definition for the new concept of data necessary for segregation or reintegration, and thus there is likely to be widespread confusion, uneven and inconsistent interpretations, and potential for disagreement, if the DFARS implementation does not provide additional clarity. More specifically, it is unclear how such segregation or reintegration data relates to the "form, fit, and function data," which would appear to cover already the vast majority of data that would be necessary for segregation or reintegration activities, with at least one critical difference: The Government is entitled to unlimited rights in form, fit, and function data, while section 815 clearly contemplates that segregation or reintegration data could be subject to limited rights, which is completely at the other end of the data rights spectrum from segregation or reintegration unlimited rights. Accordingly, establishing a definition for the term "segregation or reintegration data" allows the DFARS implementation to provide additional definitional criteria and clarifying guidance to address these concerns.

To achieve these objectives, the proposed definition for the new term "segregation or reintegration data" should both (1) incorporate all of the statutory criteria, and (2) supplement the statutory criteria with additional guidance to ensure clarity and consistency. The first objective is satisfied by incorporating the statutory performance-based language as the core of the primary definitional statement (*i.e.,* "segregation or reintegration data" means . . . "(insert statutory criteria).")

Regarding the supplementary definitional language needed to address the concerns raised by industry and academia, the proposed definition leverages existing DFARS definitional approaches, terminology, and clarifying language to harmonize the new term with the existing DFARS scheme. First, as previously noted, it is important to identify and clarify how the new term, segregation or reintegration data, relates to the established definition for "form, fit, and function data." In addition, DoD understands that part of the underlying concern that led to the statutory creation of the concept of segregation or reintegration data was based on a number of situations in which DoD and contractors faced challenges in finding mutual agreement regarding what type of data is appropriately characterized as being form, fit, and function data (*e.g.,* the level of technical detail that is required and appropriate). These challenges are exacerbated in situations in which the underlying item or process being described by the form, fit, and function data has been developed exclusively at private expense and is thus treated as proprietary technology by the contractor (*e.g.,* a contractor is less willing to share detailed technical information regarding a privately developed technology, especially when the Government will be granted unlimited rights in that data, which can then be released openly to the public).

To address this foundational issue, DoD compared the statutory language describing segregation or reintegration data with the existing regulatory definition of "form, fit, and function data." In doing so, it is important to note that the Federal Acquisition Regulation (FAR) and DFARS each define "form, fit, and function data," but use different definitions. Although the majority of the definitions may be objectively similar or consistent (*e.g.,* focusing on physical, functional, and performance characteristics to support the interchangeability of items or processes), there is a key distinction between the definitions: The FAR definition (see FAR 52.227–14(a)) covers data relating to computer software, where the DFARS definition refers only to technical data relating to items or processes. The basis for this distinction is not readily apparent, *e.g.,* to define a generic data type that describes the functional or performance characteristics of an item or process at a low level of detail, there may be no reason to exclude data because the underlying item or process is implemented by computer software, rather than hardware alone. Furthermore, it is not clear what result would or should be achieved under the DFARS definition if the item or process being described is comprised of a combination of hardware and software elements. Perhaps this is part of the reason for the challenges in applying the DFARS definition.

After careful consideration, the proposed rule amends the DFARS definition of "form, fit, and function data" to harmonize more effectively and predictably with the FAR definition (*e.g.,* covering computer software as well as technical data), including by incorporating express limitations that will more clearly address any concern that form, fit, and function data could be extended to cover data or software that includes such a degree of technical detail that it is not appropriate to be treated as form, fit, and function data that will be subject to unlimited rights (*e.g.*, the revised definition expressly excludes "computer software source code, or detailed manufacturing or process data"). See DFARS 227.001, and associated clauses at 252.227–7013(a), –7014(a), –7015(a), –7018(a), and new –7029(a).

Next, building on this clarified and harmonized definition of "form, fit, and function data," the definition of "segregation or reintegration data" then incorporates a series of additional elements to address the concerns previously identified:

1. *Relation to form, fit, and function data.* The definition expressly states that segregation or reintegration data is data that is "more detailed than form, fit, and function data" but otherwise meets the statutory criteria, and cites by way of example such data that describes the physical, logical, or operational interface or similar functional relationship between items or components.

2. *Objective Standard for Level of Detail Required.* The definition expressly states that, unless mutually agreed otherwise by the parties, the level of detail necessary to support the segregation or reintegration activities will be determined by an objective standard—that required for "persons reasonably skilled in the art." This objective standard is modeled after the well-established objective standards used for the term "developed" at baseline DFARS 252.227–7013(a)(7), and –7014(a)(7).

3. *Segregation/Reintegration at Any Practical Level.* The definition recognizes that the segregation or reintegration of an item or process is permitted to be performed at "any practical level, including down to the lowest practical level. . . ." This terminology (and the additional examples included in the definition) is adapted from the baseline DFARS coverage regarding the segregation of items or processes for the determination of source of funding for development (*i.e.*, "the doctrine of segregability"), and the definition of "developed exclusively at private expense" (see baseline DFARS 227.7103–4(b), 227.7203–4(b), 252.227–7013(a)(8)(i), and –7014(a)(8)(i)).

4. *Detailed manufacturing or process data and source code.* The definition also recognizes expressly that the application of the definitional elements would not typically require detailed manufacturing or process data or source code, but they may be included.

D. Deferred Ordering

Section 815 also added new paragraph (b)(9) to 10 U.S.C. 2320, which provides that the Government shall have the post-contract-award right to order technical data under certain conditions. Although such a "deferred ordering" right has been recognized in the DFARS for decades, section 815 was the first time that such a right has been expressly addressed in the statutory coverage. The baseline DFARS coverage for deferred ordering at 227.7103–8(b), 227.7203–8(b), and associated clause 252.227–7027, was used as the point of departure for implementing the new statutory scheme. However, to avoid any potential confusion, the baseline clause number (DFARS 252.227–7027) is being reserved, and the new statutorily based deferred ordering framework is implemented at the next available DFARS clause number, 252.227–7029.

The new statutory deferred ordering scheme is codified at 10 U.S.C. 2320(b)(9), amongst a list of elements that are required to be included in the DFARS "whenever practicable." The new statutory framework also states that the Government may place a deferred order "at any time," provided that certain conditions are met (*e.g.*, covering only certain types of data, and the Government must make a required determination that additional criteria are met in each case). Accordingly, the clause implementing the new statutory deferred ordering scheme is deemed to be required in all contracts for which the deferred ordering criteria could be met. The clause should therefore be prescribed in all contracts except those in which it would be per se impracticable to meet the statutory criteria. To avoid scenarios in which the clause criteria could be met, but the clause would not have been included up-front, the clause is prescribed for use in all solicitations and contracts using other than FAR part 12 procedures and in those using FAR part 12 procedures for the acquisition of commercial items that are being acquired for (i) a major system or subsystem thereof, or (ii) a weapon system or subsystem thereof. See DFARS 227.7102–4(d), 227.7103–8(c)(2), 227.7104(e)(4), 227.7202–4(c), and 227.7203–8(c)(2); see also new 212.301(f)(xi)(D).

The new DFARS clause at 252.227–7029 is structured to implement the statutory scheme's set of criteria that must be met in order for the Government to place a deferred order—

1. The data must have been "generated or utilized" in the performance of a contract or subcontract;

2. The Government must determine that the data is needed for an important sustainment or other life cycle support activity for a DoD system; and

3. The Government must determine that the data either—

a. Result from development activities funded in whole or in part by the Government; or

b. Is segregation or reintegration data.

DFARS 252.227–7029(a), in addition to the new or revised definitions discussed above, provides a new definition for a phrase that is used only in this clause, *i.e.*, "technical data or computer software generated or utilized in the performance of this contract or any subcontract hereunder." The term includes a series of subelements that are intended to provide clarity and predictability in interpreting whether this criterion is met, with inclusive, and exclusive, statements.

DFARS 252.227–7029(b) implements the new statutory requirements (10 U.S.C. 2320(b)(9)(A) and (B)) for the Government to determine that certain criteria are satisfied, as a prerequisite to making a deferred order. However, DoD also concluded that it was unlikely that the legislative intent was to completely preclude the Government from having any form of deferred ordering right in basic or applied research contracts where it would be unlikely that the Government could make one of the otherwise-required determinations, *i.e.*, that the technical information is needed for sustainment of a major system, weapon system, or noncommercial item (see 252.227–7029(b)(1)(i)). Accordingly, the requirement for those specific elements of a determination are waived for basic or applied research activities (see 252.227–7029(b)(2), when the nature of the contract is such that it is likely to be impracticable to require such a determination, but the circumstances are still directly related to a core objective of the statutory scheme (*e.g.*, to ensure that the Government has access to data related to development funded in whole or in part by the Government)).

DFARS 252.227–7029(c) addresses assertions by the contractor that technical data or computer software pertains to an item or process developed exclusively at private expense. To the extent that disputes might arise regarding the Government's determination that the data related to technologies developed in whole or in part at Government expense, those disputes will be governed by the existing procedures governing the validation of asserted restrictions based on the source of development funding. Any other dispute arising under the clause will be governed by the applicable disputes clause of the contract.

DFARS 252.227–7029(d) clarifies that the obligation to deliver data to the Government under an appropriate deferred order is not intended to create an implied obligation to preserve data in cases when it would otherwise be unreasonable to do so. However, this also is not intended to preclude any individual contract from including a requirement to preserve any such data for a specified period.

DFARS 252.227–7029(e) implements the statutory limitation on compensation for the contractor's compliance with an appropriate deferred order.

DFARS 252.227–7029(f) preserves and clarifies the long standing rule, which is not affected by the statutory changes, that the Government's rights in the technical data or computer software that are subject to a deferred order are determined in accordance with the applicable rights-allocation clauses in the contract (*i.e.,* the license rights are unrelated to whether the requirement for delivery was established through deferred ordering, through a delivery requirement included in the contract at award, or in any other manner for that matter).

DFARS 252.227–7029(g) clarifies that the deferred ordering clause is not intended to limit or affect in any way the ability for the Government to order through other authorized mechanisms, such as mutual agreement, or bilateral or unilateral modification of the contract.

DFARS 252.227–7029(h) implements the statutory language (at 10 U.S.C. 2320(b)(10)) that clarifies that the Government's ability to require delivery of technical data or computer software is not affected by whether the Government exercises its rights to validate asserted restrictions on such technical data or computer software.

DFARS 252.227–7029(i) clarifies that the parties' rights and obligations established in the clause will survive the end of the contract.

DFARS 252.227–7029(j) requires the clause to be flowed down to lower tier subcontracts in the same manner as the clause is prescribed for use in the prime contract.

Given that segregation or reintegration data is eligible for deferred ordering, the regulation must also recognize that such data is available for ordering up-front. References to segregation or reintegration data are therefore included at DFARS 227.7102–1(a)(2), 227.7103–2(b), 227.7202–1(c)(1) and –3(b)(1), and 227.7203–2(b)(1).

E. Validation of Asserted Restrictions

There are two primary changes required by the revisions to 10 U.S.C. 2321:

1. The standard duration of the Government's right to challenge the validity of an asserted restriction is extended to 6 years, rather than the current 3 years (see revised DFARS 252.227–7037(i)); and

2. For technical data that are the subject of fraudulently asserted restrictions, there is no time limit on the right to challenge asserted restrictions (see new DFARS 252.227–7037(i)(4)).

Equivalent revisions were also made to the procedures governing validation of asserted restrictions on computer software pursuant to the DFARS clause 252.227–7019 (see revised paragraph 252.227–7019(e)(1), and new paragraph 252.227–7019(e)(1)(D)). The new paragraphs 252.227–7019(e)(1)(A)–(C) are merely a relocation of those elements, which are embedded within paragraph (e)(1) in the baseline. This nonsubstantive revision is intended to clarify these exceptions to the standard 6 year limit using a preferred paragraph structure analogous to that in the baseline at DFARS 252.227–7037(i)(1) through (3).

F. Additional Technical Amendments

- Restructured the paragraphs in the definition of "restricted rights" regarding authorized release/use outside the Government—to streamline, eliminate redundancy/complexity, without substantive changes—other than the incorporation of segregation or reintegration data.
- Corrected references to Small Business Innovation Research (SBIR) data in the standard use and non-disclosure agreement at DFARS 227.7103–7, to conform to changes previously made to the DFARS clause 252.227–7025, to recognize that SBIR data is restricted and handled in a manner equivalent to limited rights technical data and/or restricted rights computer software.
- Clarified the prescribed use of the standard use and non-disclosure agreement and DFARS 252.227–7025: the clause is used in contracts (and not the standard use and non-disclosure agreement), and the standard use and non-disclosure agreement is used for authorized release in any/every other situation other than under a procurement contract.
- Clarified in DFARS clause 252.227–7025 (see new paragraphs (b)(1)(ii) for limited rights/restricted rights/Small Business Innovation Research (SBIR), and (b)(4)(ii) for commercial) and standard use and non-disclosure agreement, and related up-front coverage (*e.g.,* DFARS 227.7103–5(c)(3), note no equivalent discussion of notice/timing for restricted rights at DFARS 227.7203–5(c)) the timing for mandatory notice to the technical data/computer software owner, recognizing that there are three different time frames (although only 2 relevant to standard use and non-disclosure agreement, which cannot be used for a covered Government support contractor), depending on the circumstances of the release—

1. Prior to the release, except as noted in 2. and 3.;

2. As soon as practicable, but not more than 30 days after release to a covered Government support contractor (this is not new, already in baseline DFARS 252.227–7025(b)(5)(iii); but not applicable to standard use and non-disclosure agreement); and

3. As soon as practicable, in cases of emergency repair or overhaul.

- Added an affirmative obligation for the recipient of limited rights/restricted rights/SBIR or commercial data to either destroy the data, or to return to the Government (at the Government's discretion), after completion of the authorized activity. See DFARS 252.227–7025(b)(1)(iii) and (b)(4)(iii).
- Clarified in standard use and non-disclosure agreement and DFARS 252.227–7025 that the recipient of limited rights/restricted rights/SBIR, and commercial data, can use the data only as authorized—(i) in the attachment to the standard use and non-disclosure agreement; and (ii) in performance of the contract and only for activities that are authorized by the relevant license rights (*e.g.,* emergency repair or overhaul, segregation or reintegration data, or covered Government support contractor).
- Clarified that the obligations of the parties regarding use/handling of technical data/computer software in the DFARS 252.227–7025 clause, and regarding deferred ordering in the DFARS 252.227–7029 clause, survive the termination, expiration, or completion of the contract. See revisions at DFARS 252.227–7025(e) and 252.227–7029(i).
- Revised DFARS 252.227–7037(j) to include a sentence relocated from end of 252.227–7037(i)(3), where it appears to have been misplaced, as the topic (the criteria for what constitutes a "validation") is more appropriately aligned with (j).
- Revised DFARS 252.227–7019 and 252.227–7037 throughout to be consistent when referring to the

validation of "asserted restrictions" (nomenclature currently dominating 252.227–7019, and also used in 10 U.S.C. 2321, although 252.227–7037 used a mix of referring to validating the asserted restrictions and validating the restrictive markings in other cases), as distinguished from specific procedures that are directed to the associated restrictive markings. No substantive change is intended, just consistent use of the nomenclature. See revisions at 252.227–7019; and 252.227–7037(c), (d)(1) through (3).

- Amended DFARS 252.227–7019 and 252.227–7037 to clarify that disputes under new 252.227–7029(c) are handled under the validation procedures in those clauses.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule creates one new DFARS clause 252.227–7029, Deferred Ordering of Technical Data or Computer Software, to implement 10 U.S.C. 2320(b)(9) and (10), which DoD is proposing to apply to contracts at or below the SAT, and sometimes to the acquisition of commercial items (including COTS items), but not contracts solely for commercial items (including COTS items) unless acquiring for a major system or subsystem thereof or a weapon system or subsystem thereof.

10 U.S.C. 2320 and 2321 have established the applicability of rights in technical data and validity of proprietary data restrictions to noncommercial technical data and commercial technical data. It is longstanding Federal and DoD policy and practice to apply the same or analogous requirements to computer software.

This proposed rule also modifies existing provisions and clauses that implement 10 U.S.C. 2320 and 2321, or provide analogous treatment of computer software, but does not modify the applicability of these provisions and clause to contracts at or below the SAT or contracts for the acquisition of commercial items, including COTS items.

DFARS clause	Applies below the SAT	Applies to commercial items (including COTS items)
252.227–7013, Rights in Technical Data—Noncommercial Items	YES	Sometimes, only if a portion of the commercial item was developed at Government expense.
252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.	YES	NO.
252.227–7015, Technical Data—Commercial items	YES	YES.
252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.	YES	NO.
252.227–7019, Validation and Asserted Restrictions—Computer Software.	NO	NO.
252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.	YES	YES.
252.227–7037, Validation of Asserted Restrictions on Technical Data	YES	YES.

A. Applicability to Contracts at or Below the SAT

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Director, Defense Procurement and Acquisition Policy (DPAP), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

DoD is proposing to apply the requirements of 10 U.S.C. 2320(b)(9) and (10) in the new clause 252.227–7019 to contracts and subcontracts at or below the SAT, but will make the final determination after receipt and analysis of public comments.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. 41 U.S.C. 1906 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Likewise, 41 U.S.C. 1907 governs the applicability of laws to COTS items, with the Administrator for Federal Procurement Policy as the decision authority to determine that it is in the best interest of the Government to apply a provision of law to acquisitions of COTS items in the FAR. The Director, DPAP, is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

Section 815 has added a new statutory requirement at 10 U.S.C. 2320(b), paragraphs (9) and (10), with regard to deferred ordering of technical data. As amended, 10 U.S.C. 2320(b)(9)(A) specifies that one of the criteria for the right of the Government to require the delivery of technical data at any time is whether the technical data is needed for the purpose of reprocurement, sustainment, modification, or upgrade of a major system or subsystem thereof, a weapon system or subsystem thereof, or any noncommercial item or process. Consistent with the statutory requirements, DoD is proposing to prescribe the new clause that implements 10 U.S.C. 2320(b)(9) and (10) for use in solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items that are being acquired for (i) a major system or subsystem thereof, or (ii) a weapon system or subsystem thereof. DoD will make the final determination with regard to application to commercial items after receipt and analysis of public comments.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. However, an initial regulatory flexibility analysis (IRFA) has been performed and is summarized as follows:

This proposed rule was initiated to implement section 815 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92) that revised 10 U.S.C. 2320 and 2321. Section 815 of the NDAA for FY 2012—

- Adds special provisions for handling technical data that is necessary for segregation and reintegration activities;
- Codifies and revises the policies and procedures regarding deferred ordering of technical data;
- Expands the period in which DoD can challenge an asserted restriction on technical data from 3 years to 6 years;
- Rescinds changes to 10 U.S.C. 2320 from the NDAA for FY 2011; and
- Codifies Government purpose rights as the default rights for technical data related to technology developed with mixed funding.

Based on FY 2015 Federal Procurement Data System data, DoD estimates that 60,400 offerors, contractors, and subcontractors may be impacted by the proposed changes in this rule, of which approximately 40,500 (67 percent) may be small entities.

The provisions and clauses that are proposed to be amended by this rule are covered by OMB Clearance 0704–0368, which is currently being renewed for a total of 941,528 response hours (75,250 respondents) and 90,600 recordkeeping hours (60,400 recordkeepers). However, the changes in this rule are expected to have negligible impact on the burdens already covered by the OMB clearance.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD was unable to identify any alternatives that would meet the requirements of the statute and reduce the burden on small entities.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2012–D022), in correspondence.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply to this rule; however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0369, entitled "DFARS: Subparts 227.71, Rights in Technical Data; and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses of the Defense Federal Acquisition Regulation Supplement (DFARS)."

List of Subjects in 48 CFR Parts 212, 227, and 252

Government procurement.

Jennifer L. Hawes,
Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 227, and 252 are proposed to be amended as follows;

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 1. The authority citation for parts 212, 227, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.301 by—

■ a. In paragraph (f)(xii)(A), removing "227.7103–6(a)" and adding "227.7103–6(a), to comply with 10 U.S.C. 2320" in its place;

■ b. Redesignating (f)(xii)(C) as (f)(xii)(E);

■ c. Adding paragraphs (f)(xii)(C) and (D); and

■ d. In newly redesignated paragraph (f)(xii)(E), removing "227.7102–4(c)" and adding "227.7102–4(e)" in its place; The additions read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(xii) * * *

(C) Use the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings, as prescribed in 227.7102–4(c) or 227.7202–4(b), to comply with 10 U.S.C. 2320.

(D) Use the clause at 252.227–7029, Deferred Ordering of Technical Data or Computer Software, as prescribed in 227.7102–4(d), 227.7103–8(c)(2), 227.7202–4(c), or 227.7203–8(c)(2), to comply with 10 U.S.C. 2320(b)(9).

* * * * *

PART 227—PATENTS, DATA, AND COPYRIGHTS

■ 3. Add section 227.001 preceding subpart 227.3 to read as follows:

227.001 Definitions.

As used in this part—

Computer database means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

Computer program means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

Covered Government support contractor means a contractor (other than a litigation support contractor covered by the clause at DFARS 252.204–7014, Limitations on the Use or Disclosure of Information by Litigation

Support Contractors) under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(1) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(2) Receives access to technical data or computer software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings.

Developed is defined at 227.7101 for technical data and at 227.7201 for computer software and computer software documentation.

Developed exclusively at private expense means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a Government contract, or any combination thereof.

(1) Private expense determinations should be made at the lowest practicable level.

(2) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at Government, private, or mixed expense.

Developed exclusively with Government funds means development was not accomplished exclusively or partially at private expense.

Developed with mixed funding means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a Government contract, and partially with costs charged directly to a Government contract.

Form, fit, and function data means technical data or computer software that describes the required overall physical, logical, configuration, mating, attachment, interface, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item or process to the extent necessary to permit identification of physically or functionally equivalent items or processes. The term does not include computer software source code, or detailed manufacturing or process data.

Government purpose and *Government purpose rights* are defined at 227.7101 for technical data and at 227.7201 for computer software and computer software documentation.

Segregation or reintegration data means technical data or computer software that is more detailed than form, fit, and function data and that is necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes.

(1) Unless agreed otherwise by the Government and the contractor, the nature, quality, and level of technical detail necessary for these data or software shall be that required for persons reasonably skilled in the art to perform such segregation or reintegration activities.

(2) The segregation or reintegration of any such an item or process may be performed at any practical level, including down to the lowest practicable segregable level, *e.g.*, a subitem or subcomponent level, or any segregable portion of a process, computer software (*e.g.*, a software subroutine that performs a specific function), or documentation.

(3) The term—

(i) Includes data or software that describes in more detail (than form, fit, and function data) the physical, logical, or operational interface or similar functional interrelationship between the items or processes; and

(ii) May include, but would not typically require, detailed manufacturing or process data or computer software source code to support such segregation or reintegration activities.

Unlimited rights is defined at 227.7101 for technical data and at 227.7201 for computer software and computer software documentation.

■ 4. In section 227.7101, revise paragraph (b) to read as follows:

227.7101 Definitions.

* * * * *

(b) Other terms used in this subpart are defined at 227.001 and as follows:

Commercial item does not include commercial computer software (see 227.7202 for coverage regarding commercial computer software documentation).

Detailed manufacturing or process data means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

Developed means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of title 35 of the United States Code.

Government purpose means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

Government purpose rights means the rights to—

(1) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(2) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States Government purposes.

Limited rights means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

(1) The reproduction, release, disclosure, or use is—

(i) Necessary for emergency repair and overhaul;

(ii) Necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes; and such reproduction, release, disclosure, or use involves only segregation or reintegration data; or

(iii) A release or disclosure to—

(A) A covered Government support contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive limited rights technical data; or

(B) A foreign government, of technical data other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(2) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(3) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

Small Business Innovation Research (SBIR) data rights means the Government's rights during the SBIR data protection period to use, modify, reproduce, release, perform, display, or disclose technical data or computer software generated under a SBIR award as follows:

(1) Limited rights in such SBIR technical data.

(2) Restricted rights in such SBIR computer software.

Technical data means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

Unlimited rights means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

■ 5. Revise section 227.7102 heading to read as follows:

227.7102 Commercial items.

■ 6. Amend section 227.7102–1 by—

■ a. In paragraph (a) introductory text, removing "commercial item or process" and adding "commercial item" in its place;

■ b. In paragraph (a)(1), removing "fit, or function" and adding "fit, and function" in its place;

■ c. Redesignating paragraphs (a)(2) and (3) as (a)(3) and (4), respectively;

■ d. Adding new paragraph (a)(2);

■ e. In newly redesignated paragraph (a)(3), removing "commercial items or processes" and adding "commercial items" in its place, and removing "stand alone unit" and adding "stand-alone unit" in its place;

■ f. In the newly redesignated paragraph (a)(4), removing "commercial item or process" and adding "commercial item" in its place;

■ g. In paragraph (b), removing "commercial products" and adding "commercial items" in its place;

■ h. In paragraph (b)(1), removing "commercial items or processes" and adding "commercial items" in its place; and

■ i. In paragraph (b)(2), removing "commercial items or processes" and adding "commercial items" in its place.

The addition reads as follows:

227.7102–1 Policy.

(a) * * *

(2) Are segregation or reintegration data;

* * * * *

■ 7. Amend section 227.7102–2 by revising paragraph (a) to read as follows:

227.7102–2 Rights in technical data.

(a) The clause at 252.227–7015, Technical Data–Commercial Items, provides the Government specific license rights in technical data pertaining to commercial items. DoD may use, modify, reproduce, release, perform, display, or disclose data only within the Government. The data may not be used to manufacture additional quantities of the commercial items. Except for emergency repair or overhaul, segregation or reintegration, foreign government evaluational or informational purposes (other than detailed manufacturing or process data), or covered Government support contractor activities, the data may not be released or disclosed to, or used by, third parties without the contractor's written permission. Those restrictions do not apply to the technical data described in 227.7102–1(a).

* * * * *

■ 8. Amend section 227.7102–4 by—

■ a. Redesignating paragraph (c) as (e);

■ b. Adding new paragraphs (c) and paragraph (d); and

■ c. In the newly redesignated paragraph (e), removing "Validation of Restrictive Markings" and adding "Validation of Asserted Restrictions" in its place.

The additions read as follows:

227.7102–4 Contract clauses.

* * * * *

(c) Use the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings, in solicitations and contracts when it is anticipated that the Government will provide the contractor (other than a litigation support contractor covered by the clause at 252.204–7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors), for performance of its contract, technical data marked with another contractor's restrictive legend(s) or marking(s).

(d) Use the clause at 252.227–7029, Deferred Ordering of Technical Data or Computer Software, in all solicitations and contracts using other than FAR part 12 procedures, and in all solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items that are being acquired for—

(1) A major system or subsystem thereof; or

(2) A weapon system or subsystem thereof.

* * * * *

■ 9. Amend section 227.7103–2 by revising paragraph (b)(1) to read as follows:

227.7103–2 Acquisition of technical data.

* * * * *

(b)(1) Data managers or other requirements personnel are responsible for identifying the Government's minimum needs for technical data. Data needs must be established giving consideration to the contractor's economic interests in data pertaining to items or processes that have been developed at private expense; the return on the Government's investment in the development of items or processes (including technology transfer/ transition to other programs); the Government's costs to acquire, maintain, store, retrieve, and protect the data; the Government's short-term and long-term reprocurement and sustainment needs, including repair, maintenance, overhaul, spare and repair parts, and technology upgrade/insertion; and whether procurement of the items or processes (or physical or functional equivalents thereof) can be accomplished on a form, fit, and function or segregation or reintegration basis. When it is anticipated that the Government will obtain unlimited or Government purpose rights in technical data that will be required for competitive reprocurement or sustainment activities, such data should be identified as deliverable data items. Reprocurement needs may not be a sufficient reason to acquire detailed manufacturing or process data when privately developed items or processes (or physical or functional equivalents thereof) can be acquired using performance specifications, form, fit, and function data, segregation or reintegration data, or when there are a sufficient number of alternate sources that can reasonably be expected to provide such items on a performance specification, form, fit, and function, or segregation or reintegration basis.

* * * * *

■ 10. Amend section 227.7103–5 by—

■ a. In paragraph (b)(4) introductory text, removing "government purpose rights" and adding "Government purpose rights" wherever it appears;

■ b. In paragraph (b)(4)(ii), removing "Information Marked with Restrictive Legends" and adding "Information with Restrictive Legends or Markings" in its place;

■ c. In paragraphs (c)(1)(i) and (ii), removing "items, components, or processes" and adding "items or processes" in both places;

■ d. Redesignating paragraphs (c)(2)(ii) and (iii) as (c)(2)(iii) and (iv), respectively;

■ e. Adding new paragraph (c)(2)(ii);

■ f. Revising paragraph (c)(3); and

■ g. In paragraph (c)(4), removing "(c)(2)(i), (ii), or (iii)" and adding "(c)(2)" in its place; and removing "Information Marked with Restrictive Legends" and adding "Information with Restrictive Legends or Markings" in its place.

The addition and revision reads as follows:

227.7103–5 Government rights.

* * * * *

(c) * * *

(2) * * *

(ii) Necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes;

* * * * *

(3) The person asserting limited rights must be notified of the Government's intent to release, disclose, or authorize others to use such data prior to release or disclosure of the data, except notification of an intended release or disclosure for—

(i) Covered Government support contractor activities, which shall be made as soon as practicable, but not later than 30 days after such release or disclosure; and

(ii) Emergency repair or overhaul, which shall be made as soon as practicable.

* * * * *

■ 11. Amend section 227.7103–6 by—

■ a. Revising paragraph (c); and

■ b. In paragraph (e)(3), removing "Validation of Restrictive Markings" and adding "Validation of Asserted Restrictions" in its place.

The revision reads as follows:

227.7103–6 Contract clauses.

* * * * *

(c) Use the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings, in solicitations and contracts when it is anticipated that the Government will provide the contractor, for performance of its contract, technical data marked with another contractor's restrictive legend(s) or marking(s). The clause shall be incorporated into the contract prior to the Government releasing any such technical data to the contractor. See 227.7103–7 when releasing such technical data to offerors or to any person other than the contractor.

* * * * *

■ 12. Amend section 227.7103–7 by—

■ a. In paragraph (a)(1), removing "limited rights" and adding "limited rights or SBIR data rights," in its place, and removing "restricted rights" and adding "restricted rights or SBIR data rights," in its place;

■ b. Revising paragraph (b); and

■ c. Revising paragraph (c)(1).

The revisions read as follows:

227.7103–7 Use and non-disclosure agreement.

* * * * *

(b) Do not use the use and non-disclosure agreement at paragraph (c) for releases to Government contractors. Such releases are authorized only under contracts that contain the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings.

(c) * * *

(1) The Recipient shall—

(a) Use, modify, reproduce, release, perform, display, or disclose Data marked with Government purpose rights legends only for Government purposes and shall not do so for any commercial purpose. The Recipient shall not release, perform, display, or disclose these Data, without the express written permission of the contractor whose name appears in the restrictive legend (the "Contractor"), to any person other than its subcontractors or suppliers, or prospective subcontractors or suppliers, who require these Data to submit offers for, or perform, contracts with the Recipient. The Recipient shall require its subcontractors or suppliers, or prospective subcontractors or suppliers, to sign a use and non-disclosure agreement prior to disclosing or releasing these Data to such persons. Such agreement must be consistent with the terms of this agreement.

(b) Use, modify, reproduce, release, perform, display, or disclose technical data marked with limited rights or SBIR data rights legends only as authorized in the attachment to this Agreement. Release, performance, display, or disclosure to other persons is not authorized unless specified in the attachment to this Agreement or expressly permitted in writing by the Contractor. The Recipient shall promptly notify the Contractor of the execution of this Agreement and identify the Contractor's Data that has been or will be provided to the Recipient, the date and place the Data were or will be received, and the name and address of the Government office that has provided or will provide the Data. This notice shall be made prior to such release or disclosure to the Recipient, except in cases of emergency repair or overhaul activities, in which case such notice must be made as soon as practicable. The Recipient shall destroy (or return to the Government at the request of the Government) the technical data and all copies in its possession promptly following completion of the authorized activities, and shall notify the Contractor that the data have been destroyed (or returned to the Government).

(c) Use computer software marked with restricted rights or SBIR data rights legends only as authorized in the attachment to this Agreement. The recipient shall not, for example, enhance, decompile, disassemble, or reverse engineer the software; time share, or use a computer program with more than one computer at a time. The recipient shall not release, perform, display, or disclose such software to others unless authorized in the attachment to this Agreement or expressly permitted in writing by the Contractor. The Recipient shall promptly notify the Contractor of the execution of this Agreement and identify the software that has been or will be provided to the Recipient, the date and place the software were or will be received, and the name and address of the Government office that has provided or will provide the software. This notice shall be made prior to such release or disclosure to the Recipient, except in cases of emergency repair or overhaul activities, in which case such notice must be made as soon as practicable. The Recipient shall destroy (or return to the Government at the request of the Government) the software and all copies in its possession promptly following completion of the authorized activities, and shall notify the Contractor that the software has been destroyed (or returned to the Government).

(d) Use, modify, reproduce, release, perform, display, or disclose Data marked with special license rights legends (to be completed by the contracting officer. See 227.7103–7(a)(2). Omit if none of the Data requested is marked with special license rights legends).

(e) Use, modify, reproduce, perform, or display technical data that is or pertains to a commercial item and is received from the Government with commercial restrictive markings (i.e., marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract and only for activities authorized in the commercial limited rights license (defined at DFARS 252.227–7015(a)(2)) for recipients of the technical data. The Contractor shall not, without the express written permission of the party asserting such restrictions, use the technical data to manufacture additional quantities of the commercial items or for any other unauthorized purpose, or release or disclose such data to any unauthorized person. The Contractor will ensure that the party asserting restrictions is notified prior to such authorized release or disclosure, except that notice of such emergency repair or overhaul activities shall be made as soon as practicable. The Contractor shall destroy (or return to the Government at the request of the Contracting Officer) the data and all copies in its possession promptly following completion of the authorized activities under this contract, and shall notify the party asserting restrictions that the data have been destroyed (or returned to the Government).

(f) Use, modify, reproduce, perform, or display commercial computer software, or segregation or reintegration data pertaining to commercial computer software, received from the Government with commercial restrictive markings (i.e., marked to indicate that such software are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract and only for activities, if any, that are authorized in the applicable commercial license or any additional specially negotiated license rights (pursuant to DFARS 227.7202–3). The Contractor shall not, without the express written permission of the party asserting such restrictions, use the computer software for any other unauthorized purpose, or release or disclose such software to any unauthorized person. The Contractor will ensure that the party asserting restrictions is notified prior to such authorized release or disclosure. The Contractor shall destroy (or return to the Government at the request of the Contracting Officer) the software and all copies in its possession promptly following completion of the authorized activities under this contract, and shall notify the party asserting restrictions that the data or software has been destroyed (or returned to the Government).

* * * * *

■ 13. Revise section 227.7103–8 to read as follows:

227.7103–8 Deferred delivery and deferred ordering of technical data.

(a) *Deferred delivery.* The clause at 252.227–7026, Deferred Delivery of Technical Data or Computer Software, permits the contracting officer to require the delivery of technical data or computer software identified as "deferred delivery" data at any time until 2 years after acceptance by the Government of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors or suppliers to deliver such technical data or computer software expires 2 years after the date the prime contractor accepts the last item from the subcontractor or supplier for use in the performance of the contract. The contract must specify which technical data or computer software is subject to deferred delivery. The contracting officer shall notify the contractor sufficiently in advance of the desired delivery date for such data to permit timely delivery.

(b) *Deferred ordering.* The clause at 252.227–7029, Deferred Ordering of Technical Data or Computer Software, allows the contracting officer to order certain technical data or computer software that was not delivered or otherwise furnished under a contract, but that were generated or utilized in the performance of a contract. The availability of deferred ordering procedures under this clause, however, does not diminish or alter the Government's responsibility for advance planning and proactive management of program needs for technical data in accordance with 227.7103–1 and –2, and computer software in accordance with 227.7203–1 and –2. Follow the procedures and requirements at PGI 227.7103–8(b).

(c) *Contract clauses.* Use the clause at—

(1) 252.227–7026, Deferred Delivery of Technical Data or Computer Software, when it is in the Government's interests to defer the delivery of technical data; and

(2) 252.227–7029, Deferred Ordering of Technical Data or Computer Software, in all solicitations and contracts using other than FAR part 12 procedures, and in all solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items that are being acquired for—

(i) A major system or subsystem thereof; or

(ii) A weapon system or subsystem thereof.

■ 14. Amend section 227.7103–13 by—

■ a. In paragraph (d) introductory text, removing "Validation of Restrictive Markings" and adding "Validation of Asserted Restrictions" in its place;

■ b. In paragraph (d)(1) removing "three years" and adding "6 years" in two places, and removing "restrictive markings" and adding "asserted restrictions" in its place;

■ c. In paragraph (d)(1)(ii), removing "or";

■ d. In paragraph (d)(1)(iii), removing the period at the end of the sentence, and adding a semicolon and the word "or" in its place; and

■ e. Adding paragraph (d)(1)(iv).

The addition reads as follows:

227.7103–13 Government right to review, verify, challenge and validate asserted restrictions.

* * * * *

(d) * * *

(1) * * *

(iv) Are the subject of a fraudulently asserted use or release restriction.

* * * * *

227.7103–15 [Amended]

■ 15. Amend section 227.7103–15 in paragraph (c)(2) by removing "Information Marked with Restrictive Legends" and adding "Information with Restrictive Legends or Markings" in its place.

■ 16. Amend section 227.7104 by—

■ a. Redesignating paragraphs (e)(4) and (5) as (e)(5) and (6);

■ b. Adding new paragraph (e)(4);

■ c. In the newly redesignated paragraph (e)(6), removing "Validation of Restrictive Markings" and adding

"Validation of Asserted Restrictions" in its place; and

■ d. In paragraph (f)(1), removing "Information Marked with Restrictive Legends" and adding "Information with Restrictive Legends or Markings" in its place.

The addition reads as follows:

227.7104 Contracts under the Small Business Innovation Research (SBIR) Program.

(e) * * *

(4) 252.227–7029, Deferred Ordering of Technical Data or Computer Software;

* * * * *

■ 17. Amend section 227.7201 by revising paragraph (b) to read as follows:

227.7201 Definitions.

* * * * *

(b) Other terms used in this subpart are defined at 227.001 and as follows:

Commercial computer software means any computer software that is a commercial item.

Developed means that—

(1) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(2) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(3) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

Government purpose means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation for commercial purposes or authorize others to do so.

Government purpose rights means the rights to—

(1) Use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation within the Government without restriction; and

(2) Release or disclose computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States Government purposes.

Minor modification means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

Noncommercial computer software means software that does not qualify as commercial computer software under paragraph (a)(1) of the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

Restricted rights apply only to noncommercial computer software and mean the Government's rights to—

(1) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(2) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of the clause at DFARS 252.227–7014;

(3) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(4) Modify computer software provided that the Government may—

(i) Use the modified software only as provided in paragraphs (a)(15)(i) and (iii) of the clause at 252.227–7014; and

(ii) Not release or disclose the modified software except as provided in paragraph (a)(15)(ii) or (v) of the clause at 252.227–7014; and

(5) Reproduce and release or disclose the computer software outside the Government only if—

(i) The reproduction, release, or disclosure is necessary to—

(A) Permit contractors or subcontractors performing service contracts (see FAR 37.101) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations;

(B) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made;

(C) Permit covered Government support contractors in the performance of covered Government support contracts to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software; or

(D) Permit contractors or subcontractors to use, modify, reproduce, perform, display, or release or disclose segregation or reintegration data to segregate computer software from, or reintegrate that software (or functionally equivalent software) with, other computer software;

(ii) Each recipient contractor or subcontractor ensures that the party that has granted restricted rights is notified of such release or disclosure;

(iii) Such contractors or subcontractors are subject to the use and non-disclosure agreement at DFARS 227.7103–7 or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings;

(iv) The Government does not permit the recipient to use, decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of the clause at 252.227–7014, for any purpose other than those authorized in paragraph (a)(15)(v)(A); and

(v) The recipient's use of the computer software is subject to the limitations in paragraphs (a)(15)(i) through (iv) of the clause at 252.227–7014.

Unlimited rights means rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

227.7202–1 [Amended]

■ 18. Amend section 227.7202–1 in paragraph (c)(1) by removing "except for information" and adding "except for form, fit, and function data, segregation or reintegration data, or information" in its place.

■ 19. Amend section 227.7202–3 by—

■ a. In paragraph (a), removing "The Government" and adding "Except as provided in paragraphs (b) and (c) of this section, the Government" in its place;

■ b. Redesignating paragraph (b) as paragraph (c);

■ c. Adding new paragraph (b); and

■ d. In the newly redesignated paragraph (c), removing "rights not conveyed" and adding "rights that are not conveyed", and removing "provided to the public" and adding "provided to the public and are not authorized to be required by paragraph (b) of this section" in its place.

The addition reads as follows:

227.7202–3 Rights in commercial computer software or commercial computer software documentation.

* * * * *

(b)(1) For segregation and reintegration data, the Government may require that its license rights include the right for the Government to use, modify, reproduce, release, perform, display, or disclose that data to the extent necessary for the segregation of the commercial computer software from, or the reintegration of that commercial computer software (or functionally equivalent computer software) with, other computer software, items, or processes. Unless the parties agree otherwise in accordance with paragraph (c) of this section, the license shall authorize the Government to release the segregation and reintegration data outside the Government only if—

(i) The recipient of the data is subject to a prohibition on the further reproduction, release, disclosure, or use of that data; and

(ii) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(2) Follow the procedures and requirements at PGI 227.7202–3(b).

* * * * *

■ 20. Amend section 227.7202–4 by—

■ a. Revising the section heading;

■ b. Designating the introductory text as paragraph (a); and

■ c. Adding paragraphs (b) and (c).

The revision and additions read as follows:

227.7202–4 Contract clauses.

* * * * *

(b) Use the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings, in solicitations and contracts when it is anticipated that the Government will provide the contractor (other than a litigation support contractor covered by 252.204–7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors), for performance of its contract, technical data or computer software marked with another contractor's restrictive legend(s) or marking(s).

(c) Use the clause at 252.227–7029, Deferred Ordering of Technical Data or Computer Software, in all solicitations and contracts using other than FAR part 12 procedures, and in all solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items that are being acquired for—

(1) A major system or subsystem thereof; or

(2) A weapon system or subsystem thereof.

■ 21. Amend section 227.7203–2 by revising paragraph (b)(1) to read as follows:

227.7203–2 Acquisition of noncommercial computer software and computer software documentation.

* * * * *

(b)(1) Data managers or other requirements personnel are responsible for identifying the Government's minimum needs. In addition to desired software performance, compatibility, or other technical considerations, needs determinations should consider such factors as multiple site or shared use requirements; whether the Government's software operation or sustainment will require the right to modify or have third parties modify the software; contractor's economic interests in computer software developed at private expense; the return on the Government's investment in the development of computer software (including technology transfer/transition to other programs); the Government's costs to acquire, maintain, store, retrieve, and protect the software or documentation; the Government's short-term and long-term reprocurement and sustainment needs, including repair, maintenance, overhaul, spare and repair parts, and technology upgrade/insertion; whether procurement of the software (or functional equivalents thereof) can be accomplished on a form, fit, and function or segregation or reintegration basis; and any special computer software documentation requirements.

* * * * *

227.7203–5 [Amended]

■ 22. Amend section 227.7203–5 by—

■ a. In paragraph (b)(4) introductory text, removing "government purpose rights" and adding "Government purpose rights" in its place wherever it appears; and

■ b. In paragraph (b)(4)(ii) removing "Information Marked with Restrictive Legends" and adding "Information with Restrictive Legends or Markings" in its place.

■ 23. Amend section 227.7203–6 by—

■ a. Revising the section heading;

■ b. Revising paragraph (d); and

■ c. In paragraph (f) by removing "Validation of Restrictive Markings" and adding "Validation of Asserted Restrictions" in its place.

The revisions read as follows:

227.7203–6 Solicitation provision and contract clauses.

* * * * *

(d) Use the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings, in solicitations and contracts when it is anticipated that the Government will provide the contractor (other than a litigation support contractor covered by 252.204–7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors), for performance of its contract, computer software or computer software documentation marked with another contractor's restrictive legend(s) or marking(s). The clause must be incorporated into the contract prior to the Government releasing any such computer software or computer software documentation to the Contractor.

* * * * *

■ 24. Revise section 227.7203–8 to read as follows:

227.7203–8 Deferred delivery and deferred ordering of computer software and computer software documentation.

(a) *Deferred delivery.* The clause at 252.227–7026, Deferred Delivery of Technical Data or Computer Software, permits the contracting officer to require the delivery of computer software or computer software documentation identified as "deferred delivery" data at any time until 2 years after acceptance by the Government of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors or suppliers to deliver such data expires 2 years after the date the prime contractor accepts the last item from the subcontractor or supplier for use in the performance of the contract. The contract must specify the computer software or computer software documentation that is subject to deferred delivery. The contracting officer shall notify the contractor sufficiently in advance of the desired delivery date for such software or documentation to permit timely delivery.

(b) *Deferred ordering.* The clause at 252.227–7029, Deferred Ordering of Technical Data or Computer Software, allows the contracting officer to order certain technical data or computer software that was not delivered or otherwise furnished under a contract, but that was generated or utilized in the performance of a contract. The availability of deferred ordering procedures under this clause, however, does not diminish or alter the Government's responsibility for advance planning and proactive management of program needs for technical data and computer software in accordance with 227.7103–1 and –2, and 227.7203–1 and –2, respectively. Follow the procedures and requirements at PGI 227.7103–8(b).

(c) *Contract clauses.* Use the clause at—

(1) 252.227–7026, Deferred Delivery of Technical Data or Computer Software, when it is in the Government's interests to defer the delivery of computer software or computer software documentation; and

(2) 252.227–7029, Deferred Ordering of Technical Data or Computer Software, in all solicitations and contracts using other than FAR part 12 procedures, and in all solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items that are being acquired for—

(i) A major system or subsystem thereof; or

(ii) A weapon system or subsystem thereof.

227.7203–13 [Amended]

■ 25. Amend section 227.7203–13 in paragraph (e)(3)(i) by removing "three years" and adding "6 years" in two places, and removing "or has been otherwise made available without restrictions" and adding "has been otherwise made available without restrictions, or is the subject of a fraudulently asserted use or release restriction" in its place.

227.7203–15 [Amended]

■ 26. Amend section 227.7203–15 by—

■ a. In paragraph (c)(1), removing the semicolon and replacing it with a period;

■ b. In paragraph (c)(2), removing the semicolon and replacing it with a period; and

■ c. In paragraph (c)(3), removing "Information Marked with Restrictive Legends; and" and adding "Information with Restrictive Legends or Markings." in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 27. Amend section 252.227–7013 by—

■ a. Removing the clause date "(FEB 2014)" and adding "(DATE)" in its place;

■ b. In paragraph (a)—

i. Removing paragraph number designations;

ii. In the definition of "Covered Government support contractor" removing "covered by 252.204–7014" and adding "covered by the clause at DFARS 252.204–7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors," in its place; redesignating (i) and (ii) as (1) and (2), respectively; and in the newly redesignated (2), removing "252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends" and adding "DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings" in its place;

iii. In the definition of "Developed exclusively at private expense", removing in the introductory text the word "government" and adding "Government" in its place; redesignating paragraphs (i) and (ii) as (1) and (2), respectively; and, in the newly redesignated paragraph (2) removing the word "government" and adding "Government" in its place;

iv. In the definition of "Developed exclusively with government funds" removing the word "government" and adding "Government" in its place;

v. In the definition of "Developed with mixed funding" removing the word "government" and adding "Government" in its place in two places;

vi. Revising the definition of "Form, fit and function data";

vii. In the definition of "Government purpose rights" redesignating paragraphs (i) and (ii) as (1) and (2), respectively; and in the newly redesignated paragraph (2) removing "government purposes" and adding "Government purposes" in its place;

viii. In the definition of "Limited rights", redesignating paragraph (i) introductory text, paragraphs (ii), and (iii) as paragraph (1) introductory text, paragraphs (2), and (3), respectively; in the newly redesignated paragraph (1), redesignating paragraphs (1)(A) and (B) introductory text as paragraphs (1)(i) and (iii) introductory text, respectively; adding paragraph (1)(ii); in the newly redesignated paragraph (1)(i), removing "or"; and in the newly redesignated paragraph (1)(iii), redesignating paragraphs (1)(iii)(*1*) and (*2*) as paragraphs (1)(iii)(A) and (B), respectively; and

ix. Adding, in alphabetical order, the definition for "Segregation or reintegration data";

■ c. In paragraph (b)(2)(i), removing "government purpose" and adding "Government purpose" in its place; and removing "five-year" and adding "5-year" in its place;

■ d. In paragraph (b)(2)(iii) removing "government purpose" and adding "Government purpose" in its place;

■ e. In paragraph (b)(2)(iii)(B), removing "Information Marked with Restrictive Legends" and adding "Information with Restrictive Legends or Markings" in its place;

■ f. In paragraph (b)(2)(iv), removing "government purpose" and adding "Government purpose" in its place in two places;

■ g. In paragraphs (b)(3)(i)(A) and (B), removing "items, components, and processes" and adding "items or processes" in both places;

■ h. Revising paragraph (b)(3)(ii);

■ i. Redesignating paragraphs (b)(3)(iii) and (iv) introductory text as (b)(3)(iv) and (v) introductory text, respectively;

■ j. Adding paragraph (b)(3)(iii);

■ k. Amending paragraph (b)(3)(v)(D) by removing "252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends" and adding "DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings" in its place;

■ l. Amending paragraph (b)(4) by removing "government purpose" and adding "Government purpose" in its place;

■ m. Amending paragraph (b)(5) heading by removing "*government*" and adding "*Government*" in its place;

■ n. Amending paragraph (f) by removing "government purpose" and adding "Government purpose" in its place;

■ o. Amending paragraph (f)(4)(ii) by removing "government purpose" and adding "Government purpose" in its place; and

■ p. In Alternate II—

■ i. Revising the clause date and the introductory text; and

■ ii. In paragraph (a), removing "(a)(17)" and adding "(a)" in its place.

The revision and additions read as follows:

252.227–7013 Rights in Technical Data—Noncommercial Items.

* * * * *

(a) * * *

Form, fit, and function data means technical data or computer software that describes the required overall physical, logical, configuration, mating, attachment, interface, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item or process to the extent necessary to permit identification of physically or functionally equivalent items or processes. The term does not include computer software source code, or detailed manufacturing or process data.

* * * * *

Limited rights * * *

(1) * * *

(ii) Necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes; and such reproduction, release, disclosure, or use involves only segregation or reintegration data; or

* * * * *

Segregation or reintegration data means technical data or computer software that is more detailed than form, fit, and function data and that is necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes.

(1) Unless agreed otherwise by the Government and the contractor, the nature, quality, and level of technical detail necessary for these data or software shall be that required for persons reasonably skilled in the art to perform such segregation or reintegration activities.

(2) The segregation or reintegration of any such an item or process may be performed at any practical level, including down to the lowest practicable segregable level, *e.g.,* a subitem or subcomponent level, or any segregable portion of a process, computer software (*e.g.,* a software subroutine that performs a specific function), or documentation.

(3) The term—

(i) Includes data or software that describes in more detail (than form, fit, and function data) the physical, logical, or operational interface or similar functional interrelationship between the items or processes; and

(ii) May include, but would not typically require, detailed manufacturing or process data or computer software source code to support such segregation or reintegration activities.

* * * * *

(b) * * *

(3) * * *

(ii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy (or return to the Government at the request of the Contracting Officer) the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed (or returned to the Government).

(iii) The Government shall require a recipient of limited rights data for segregation or reintegration activities to destroy the data and all copies in its possession promptly following completion of the segregation or reintegration activities in performance of the contract under which such data were received, and to notify the Contractor that the data have been destroyed.

* * * * *

ALTERNATE II (DATE)

As prescribed in 227.7103–6(b)(2), add to the basic clause the following definition of "vessel design" in paragraph (a) and the following paragraph (b)(7):

* * * * *

■ 28. Amend section 252.227–7014 by—

■ a. Removing the clause date "(FEB 2014)" and adding "(DATE)" in its place;

■ b. In paragraph (a)—

■ i. Removing paragraph number designations;

■ ii. Revising the definition of "Commercial computer software";

■ iii. In the definition of "Covered Government support contractor" removing from the introductory text "covered by 252.204–7014" and adding "covered by the clause at DFARS 252.204–7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors," in its place; redesignating paragraphs (i) and (ii) as (1) and (2), respectively; in the newly redesignated paragraph (2) removing "252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends" and adding "DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings" in its place;

■ iv. In the definition of "Developed" redesignating paragraphs (i), (ii), and (iii) as (1), (2), and (3), respectively;

■ v. In the definition of "Developed exclusively at private expense" removing from the introductory text "government" and adding "Government" in its place; redesignating paragraphs (i) and (ii) as (1) and (2), respectively; and in the newly redesignated paragraph (2) removing "government" and adding "Government" in its place;

■ vi. In the definition of "Developed exclusively with government funds" removing "*government*" and adding "*Government*" in its place;

■ vii. In the definition of "Developed with mixed funding" removing "government" and adding "Government" in its place in two places;

■ viii. Adding a definition for "Form, fit, and function data";

■ ix. In the definition of "Government purpose rights" redesignating paragraphs (i) and (ii) as (1) and (2), respectively; and in the newly redesignated paragraph (2) removing "government purposes" and adding "Government purposes" in its place;

■ x. In the definition of "Restricted rights" redesignating paragraphs (i), (ii), (iii), (iv) introductory text, and (v) introductory text as (1), (2), (3), (4) introductory text, and (5) introductory text, respectively; removing paragraphs (vi) and (vii); in the newly redesignated paragraph (4), redesignating paragraphs (4)(A) and (B) as (4)(i) and (ii), respectively; in the newly redesignated paragraph (4)(ii) removing "(a)(15)(ii), (v), (vi) and (vii)" and adding "(a)(15)(ii) or (v)" in its place; and revising the newly redesignated paragraph (5);

■ xi. Adding, in alphabetical order, a definition of "Segregation or reintegration data";

■ c. Amending paragraph (b)(1)(vi)(A) by removing "government" and adding "Government" in its place;

■ d. Amending paragraph (b)(2)(i) by removing "government purpose" and adding "Government purpose" in its place;

■ e. Amending paragraph (b)(2)(ii) by removing "five years" and adding "5 years" in its place in two places, and removing "government purpose" and adding "Government purpose" in its place;

■ f. Amending (b)(2)(iii) by removing "government purpose" and adding "Government purpose" in its place;

■ g. Amending (b)(2)(iii)(B) by removing "Information Marked with Restrictive Legends" and adding "Information with Restrictive Legends or Markings" in its place;

■ h. Amending (b)(3)(iii)(D) by removing "252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends" and adding

"DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings" in its place;

■ i. Amending (b)(4) by removing "government purpose" and adding "Government purpose" in its place;

■ j. Amending (b)(5) heading by removing "*government*" and adding "*Government*" in its place; and

■ k. Amending (f) introductory text, (f)(2), and (f)(4)(ii) by removing "government purpose" and adding "Government purpose" in its place wherever it appears.

The additions and revisions read as follows:

252.227–7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

* * * * *

(a) * * *

Commercial computer software means any computer software that is a commercial item.

* * * * *

Form, fit, and function data means technical data or computer software that describes the required overall physical, logical, configuration, mating, attachment, interface, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item or process to the extent necessary to permit identification of physically or functionally equivalent items or processes. The term does not include computer software source code, or detailed manufacturing or process data.

* * * * *

Restricted rights * * *

(5) Reproduce and release or disclose the computer software outside the Government only if—

(i) The reproduction, release, or disclosure is necessary to permit—

(A) Contractors or subcontractors performing service contracts (see FAR 37.101) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations;

(B) Contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made;

(C) Covered Government support contractors in the performance of covered Government support contracts to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software; or

(D) Contractors or subcontractors to use, modify, reproduce, perform, display, or release or disclose segregation or reintegration data to segregate computer software from, or reintegrate that software (or functionally equivalent software) with, other computer software;

(ii) Each recipient contractor or subcontractor ensures that the party that has granted restricted rights is notified of such release or disclosure;

(iii) Such contractors or subcontractors are subject to the use and non-disclosure agreement at DFARS 227.7103–7 or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings;

(iv) The Government shall not permit the recipient to use, decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(15)(iv) of this clause, for any purpose other than those authorized in paragraph (a)(15)(v)(A); and

(v) The recipient's use of the computer software is subject to the limitations in paragraphs (a)(15)(i) through (iv) of this clause.

Segregation or reintegration data means technical data or computer software that is more detailed than form, fit, and function data and that is necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes.

(1) Unless agreed otherwise by the Government and the contractor, the nature, quality, and level of technical detail necessary for these data or software shall be that required for persons reasonably skilled in the art to perform such segregation or reintegration activities.

(2) The segregation or reintegration of any such an item or process may be performed at any practical level, including down to the lowest practicable segregable level, *e.g.*, a subitem or subcomponent level, or any segregable portion of a process, computer software (*e.g.*, a software subroutine that performs a specific function), or documentation.

(3) The term—

(i) Includes data or software that describes in more detail (than form, fit, and function data) the physical, logical, or operational interface or similar functional interrelationship between the items or processes; and

(ii) May include, but would not typically require, detailed manufacturing or process data or computer software source code to support such segregation or reintegration activities.

* * * * *

■ 29. Amend section 252.227–7015 by—

■ a. Removing the clause date "(FEB 2014)" and adding "(DATE)" in its place;

■ b. In paragraph (a)—

■ i. Removing paragraph number designations;

■ ii. Revising the definition of "Commercial item";

■ iii. Adding, in alphabetical order, the definition of "Commercial limited rights";

■ iv. Adding, in alphabetical order, the definition of "Commercial unlimited rights";

■ v. In the definition of "Covered Government support contractor" removing "252.204–7014" and adding "the clause at DFARS 252.204–7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors" in its place; redesignating paragraphs (i) and (ii) as (1) and (2), respectively; and in the newly redesignated paragraph (2) removing "252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends" and adding "DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings" in its place;

■ vi. Revising the definition of "Form, fit, and function data";

■ vii. Removing "The term *item* includes components or processes."; and

■ viii. Adding, in alphabetical order, the definition of "Segregation or reintegration data";

■ c. Revising the paragraph (b)(1) introductory text;

■ d. Revising paragraph (b)(2);

■ e. In paragraph (b)(3)(iv), removing "252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends" and adding "DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished

Information with Restrictive Legends or Markings" in its place;

■ f. Redesignating paragraph (e) as paragraph (f);

■ g. Adding a new paragraph (e);

■ h. In the newly redesignated paragraph (f), remove the last sentence of paragraph (f)(2); and

■ i In Alternate II—

■ i. Revising the clause date and the introductory text; and

■ ii. In paragraph (a), removing "(a)(6)" and adding "(a)" in its place.

The revisions and additions read as follows:

252.227–7015 Technical Data–Commercial Items.

* * * * *

Commercial item does not include commercial computer software (see DFARS 227.7202 for coverage regarding commercial computer software documentation).

Commercial limited rights means the rights to use, modify, reproduce, release, perform, display, or disclose, in whole or in part within the Government, technical data pertaining to commercial items. The Government may not, without the written permission of the party asserting commercial limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture of additional quantities of the commercial items, or authorize the technical data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if—

(1) The reproduction, release, disclosure, or use is—

(i) Necessary for emergency repair and overhaul;

(ii) Necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes; and such reproduction, release, disclosure, or use involves only segregation or reintegration data; or

(iii) A release or disclosure to—

(A) A covered Government support contractor, for use, modification, reproduction, performance, display, or release or disclosure to authorized person(s) in performance of a Government contract; or

(B) A foreign government, of technical data, other than detailed manufacturing or process data, when use of such data by the foreign government is in the interest of the Government and is required for evaluational or informational purposes;

(2) The recipient of the technical data is subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(3) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

Commercial unlimited rights means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

* * * * *

Form, fit, and function data means technical data or computer software that describes the required overall physical, logical, configuration, mating, attachment, interface, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item or process to the extent necessary to permit identification of physically or functionally equivalent items or processes. The term does not include computer software source code, or detailed manufacturing or process data.

Segregation or reintegration data means technical data or computer software that is more detailed than form, fit, and function data and that is necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes.

(1) Unless agreed otherwise by the Government and the contractor, the nature, quality, and level of technical detail necessary for these data or software shall be that required for persons reasonably skilled in the art to perform such segregation or reintegration activities.

(2) The segregation or reintegration of any such an item or process may be performed at any practical level, including down to the lowest practicable segregable level, *e.g.,* a subitem or subcomponent level, or any segregable portion of a process, computer software (*e.g.,* a software subroutine that performs a specific function), or documentation.

(3) The term—

(i) Includes data or software that describes in more detail (than form, fit, and function data) the physical, logical, or operational interface or similar functional interrelationship between the items or processes; and

(ii) May include, but would not typically require, detailed manufacturing or process data or computer software source code to support such segregation or reintegration activities.

* * * * *

(b) *License.* (1) The Government shall have commercial unlimited rights in technical data that pertain to commercial items and—

* * * * *

(2) Except as provided in paragraphs (b)(1) and (e) of this clause, the Government shall have commercial limited rights in technical data pertaining to commercial items.

* * * * *

(e) *Applicability to development at private expense.* This clause will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense. The clause at DFARS 252.227–7013, Rights in Technical Data–Noncommercial Items, will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense.

* * * * *

ALTERNATE I (DATE)

As prescribed in 227.7102–4(a)(2), add to the basic clause the following definition of "vessel design" in paragraph (a) and the following paragraph (b)(4):

* * * * *

■ 30. Amend section 252.227–7018 by—

■ a. Removing the clause date "(FEB 2014)" and adding "(DATE)" in its place;

■ b. In paragraph (a)—

■ i. Removing paragraph number designations;

■ ii. In the definition of "Commercial computer software" redesignating paragraphs (i) through (iv) as (1) through (4), respectively;

■ iii. In the definition of "Covered Government support contractor" introductory text, removing "252.204–7014" and adding "the clause at DFARS 252.204–7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors" in its place; redesignating paragraphs (i) and (ii) as (1) and (2), respectively; and in the newly redesignated paragraph (2) removing "252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends" and adding "DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings" in its place;

■ iv. In the definition of "Developed" redesignating paragraphs (i) thorough (iv) as (1) through (4), respectively;

■ v. In the definition of "Developed exclusively at private expense" introductory text, removing "government" and adding

"Government" in its place; redesignating paragraphs (i) and (ii) as (1) and (2), respectively; and in the newly redesignated paragraph (2) removing "government" and adding "Government" in its place;

■ vi. In the definition of "Developed exclusively with government funds" removing "*government*" and adding "*Government*" in its place;

■ vii. In the definition of "Developed with mixed funding" removing "government" and adding "Government" in its place in two places.

■ viii. Revising the definition of "Form, fit and function data";

■ ix. In the definition of "Limited rights" redesignating paragraph (i) introductory text, paragraphs (ii), and (iii) as paragraph (1) introductory text, paragraphs (2), and (3), respectively; in the newly redesignated paragraph (1), redesignating paragraphs (1)(A) and (B) introductory text as (1)(i) and (iii) introductory text, respectively; adding paragraph (1)(ii); in the newly redesignated (1)(i), removing "or"; in the newly redesignated (1)(iii), redesignating paragraphs (1)(iii)(*1*) and (*2*) as (1)(iii)(A) and (B), respectively.

■ x. In the definition of "Restricted rights" redesignating paragraphs (i), (ii), (iii), (iv) introductory text and (v) introductory text as (1), (2), (3), (4) introductory text, and (5) introductory text, respectively; removing paragraphs (vi) and (vii); in the newly redesignated paragraph (4) redesignating paragraphs (4)(A) and (B) as (4)(i) and (ii), respectively; in the newly redesignated paragraph (4)(ii) removing "(a)(18)(ii), (v), (vi) and (vii of this clause;)" and adding "(a)(18)(ii) or (v) of this clause; and"; and revising the newly redesignated paragraph (5);

■ xi. In the definition of "SBIR data rights" redesignating paragraphs (i) and (ii) as (1) and (2); and

■ xii. Adding, in alphabetical order, a definition for "Segregation or reintegration data";

■ c. In paragraph (b)(8)(iv), removing "252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends" and adding "DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings" in its place; and

■ d. In paragraph (f)(5)(ii), removing "government" and adding "Government" in its place.

The revisions and additions read as follows:

252.227–7018 Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

* * * * *

Form, fit, and function data means technical data or computer software that describes the required overall physical, logical, configuration, mating, attachment, interface, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item or process to the extent necessary to permit identification of physically or functionally equivalent items or processes. The term does not include computer software source code, or detailed manufacturing or process data.

* * * * *

Limited rights * * *

(1) * * *

(ii) Necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes; and such reproduction, release, disclosure, or use involves only segregation or reintegration data; or

* * * * *

Restrictive rights * * *

(5) Reproduce and release or disclose the computer software outside the Government only if—

(i) The reproduction, release, or disclosure is necessary to—

(A) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations;

(B) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made;

(C) Permit covered Government support contractors in the performance of covered Government support contracts to use, modify, reproduce, perform, display, or release or disclose the computer software to a person authorized to receive restricted rights computer software; or

(D) Permit contractors or subcontractors to use, modify, reproduce, perform, display, or release or disclose segregation or reintegration data to segregate computer software from, or reintegrate that software (or functionally equivalent software) with, other computer software;

(ii) Each recipient contractor or subcontractor notifies the party that has granted restricted rights that a release or disclosure was made;

(iii) Such contractors or subcontractors are subject to the use and non-disclosure agreement at DFARS 227.7103–7 or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings;

(iv) The Government shall not permit the recipient to use, decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(18)(iv) of this clause, for any purpose other than those authorized in paragraph (a)(18)(v)(A); and

(v) The recipient's use of the computer software is subject to the limitations in paragraphs (a)(18)(i) through (iv) of this clause.

* * * * *

Segregation or reintegration data means technical data or computer software that is more detailed than form, fit, and function data and that is necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes.

(1) Unless agreed otherwise by the Government and the contractor, the nature, quality, and level of technical detail necessary for these data or software shall be that required for persons reasonably skilled in the art to perform such segregation or reintegration activities.

(2) The segregation or reintegration of any such an item or process may be performed at any practical level, including down to the lowest practicable segregable level, *e.g.,* a subitem or subcomponent level, or any segregable portion of a process, computer software (*e.g.,* a software subroutine that performs a specific function), or documentation.

(3) The term—

(i) Includes data or software that describes in more detail (than form, fit, and function data) the physical, logical, or operational interface or similar functional interrelationship between the items or processes; and

(ii) May include, but would not typically require, detailed manufacturing or process data or computer software source code to support such segregation or reintegration activities.

* * * * *

■ 31. Amend section 252.227–7019 by—
■ a. Removing the clause date "(SEP 2011)" and adding "(DATE)" in its place;
■ b. Revising paragraph (b);
■ c. In paragraph (d)(1), removing "asserted restrictions" and adding "asserted restrictions (including as assertion under paragraph (c) of DFARS 252.227–7029, Deferred Ordering of Technical Data or Computer Software)" in its place;
■ d. In paragraph (d)(2)(i)(B), removing "restriction" and adding "marking" in its place; removing "sixty (60) days" and adding "60 days" in its place; and removing "the markings" and adding "the marking" in its place;
■ e. Revising paragraph (e)(1);
■ f. In paragraph (e)(2), removing "sustain" and adding "sustains" in its place;
■ g. In paragraph (g)(1)(ii), removing "sixty (60) days" and adding "60 days" in its place;
■ h. In paragraph (g)(1)(iv), removing "three-year" and adding "3-year" in its place;
■ i. In paragraph (h)(1)(i), removing "ninety (90) days" and adding "90 days" in its place;
■ j. In paragraph (h)(1)(ii), removing "one year" and adding "1 year" in its place; and removing "ninety (90) days" and adding "90 days" in its place;
■ k. In paragraph (h)(1)(iii), removing "ninety (90) days" and adding "90 days" in its place in two places; and removing "one year" and adding "1 year" in its place;
■ l. In paragraph (h)(2)(i), removing "ninety (90) days" and adding "90 days";
■ m. In paragraph (h)(2)(ii), removing "ninety (90) days" and adding "90 days";
■ n. In paragraph (h)(2)(iii), removing "one year" and adding "1 year" in its place; and removing "ninety (90) days" and adding "90 days" in its place;
■ o. In paragraph (h)(3), removing "government" and adding "Government" in its place in two places; removing "227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS)" and adding "DFARS 227.7103–7" in its place; and removing "Information Marked with Restrictive Legends" and adding "Information with Restrictive Legends or Markings" in its place.

The revisions read as follows:

252.227–7019 Validation of Asserted Restrictions—Computer Software.

* * * * *

(b) *Justification.* The Contractor shall maintain records sufficient to justify the validity of any asserted restrictions on the Government's rights to use, modify, reproduce, perform, display, release, or disclose computer software delivered, required to be delivered, or otherwise provided to the Government under this contract and shall be prepared to furnish to the Contracting Officer a written justification for such asserted restrictions in response to a request for information under paragraph (d) of this clause or a challenge under paragraph (f) of this clause.

* * * * *

(e) * * *

(1) The Government, when there are reasonable grounds to do so, has the right to review and challenge the validity of any restrictions asserted by the Contractor on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software delivered, to be delivered under this contract, or otherwise provided to the Government in the performance of this contract. The Government may exercise this right within 6 years after the date(s) the software is delivered or otherwise furnished to the Government, or 6 years following final payment under this contract, whichever is later. The Government may, however, challenge a restriction on the release, disclosure or use of computer software at any time if such software—

(A) Is publicly available;

(B) Has been furnished to the United States without restriction;

(C) Has been otherwise made available without restriction; or

(D) Is the subject of a fraudulently asserted use or release restriction.

* * * * *

■ 32. Amend 252.227–7025 by—
■ a. Revising the heading, introductory text, clause title, and clause date;
■ b. In paragraph (a)(1), removing "252.227–7013" and adding "DFARS 252.227–7013" in its place;
■ c. In paragraph (a)(2), removing "government purpose rights," and adding "Government purpose rights," in its place and removing "252.227–7014" and adding "DFARS 252.227–7014" in its place;
■ d. In paragraph (a)(3), removing "252.227–7018" and adding "DFARS 252.227–7018";
■ e. Revising paragraph (b)(1)(i);
■ f. Redesignating paragraph (b)(1)(ii) as paragraph (b)(1)(iv);
■ g. Adding new paragraph (b)(1)(ii) and paragraph (b)(1)(iii);
■ h. In the newly redesignated (b)(1)(iv), removing "(b)(5)" and adding "(b)(6)" in its place; and adding a period at the end of the sentence;
■ i. In paragraph (b)(2), removing "government" and adding "Government" in its place wherever it appears; and removing "227.7103–7" and adding "DFARS 227.7103–7" in its place;
■ j. In paragraph (b)(3)(i) removing "227.7103–7" and adding "DFARS 227.7103–7" in its place;
■ k. In paragraph (b)(3)(ii), removing "(b)(5)" and adding "(b)(6)" in its place;
■ l. Revising paragraph (b)(4);
■ m. Redesignating paragraph (b)(5) as (b)(6);
■ n. Adding new paragraph (b)(5);
■ o. In the newly redesignated (b)(6) introductory text, removing "legends" and adding "legends or markings" in its place;
■ p. Revising paragraph (b)(6)(iii); and
■ q. Adding paragraph (e).

The revisions and additions read as follows:

252.227–7025 Limitations on the Use or Disclosure of Government-Furnished Information with Restrictive Legends or Markings.

As prescribed in 227.7102–4(c), 227.7103–6(c), 227.7104(f)(1), 227.7202–4(b), or 227.7203–6(d), use the following clause:

LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT–FURNISHED INFORMATION WITH RESTRICTIVE LEGENDS OR MARKINGS (DATE)

* * * * *

(b) * * *

(1) * * *

(i) The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends, computer software received with restricted rights legends, or SBIR technical data or computer software received with SBIR data rights legends (during the SBIR data protection period) only in the performance of this contract and only for activities authorized in the license for recipients of the data or software. The Contractor shall not, without the express written permission of the party whose name appears in the legend, use the data or software for any unauthorized purpose or release or disclose the data or software to any unauthorized person.

(ii) The Contractor shall ensure that the party whose name appears in the legend is notified prior to such authorized release or disclosure, except that notice regarding—

(A) Covered Government support contractor activities shall be made as soon as practicable, but not later than 30 days after such release or disclosure; and

(B) Emergency repair or overhaul activities shall be made as soon as practicable.

(iii) The Contractor shall destroy (or return to the Government at the request of the Contracting Officer) the data or software and all copies in its possession promptly following completion of the authorized activities under this contract, and shall notify the party whose name appears in the legend that the data or software has been destroyed (or returned to the Government).

* * * * *

(4) *GFI technical data marked with commercial restrictive markings.*

(i) The Contractor shall use, modify, reproduce, perform, or display technical data that is or pertains to a commercial item and is received from the Government with commercial restrictive markings (*i.e.,* marked to indicate that such data are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract and only for activities authorized in the commercial limited rights license (defined at DFARS 252.227–7015(a)(2)), or any additional specially negotiated license rights (pursuant to 252.227–7015(c)), for recipients of the technical data. The Contractor shall not, without the express written permission of the party asserting such restrictions, use the technical data to manufacture additional quantities of the commercial items or for any other unauthorized purpose, or release or disclose such data to any unauthorized person.

(ii) The Contractor shall ensure that the party asserting restrictions is notified prior to such authorized release or disclosure, except that notice regarding—

(A) Covered Government support contractor activities shall be made as soon as practicable, but not later than 30 days after such release or disclosure; and

(B) Emergency repair or overhaul activities shall be made as soon as practicable.

(iii) The Contractor shall destroy (or return to the Government at the request of the Contracting Officer) the data and all copies in its possession promptly following completion of the authorized activities under this contract, and shall notify the party asserting restrictions that the data has been destroyed (or returned to the Government).

(iv) If the Contractor is a covered Government support contractor, the Contractor is also subject to the additional terms and conditions at paragraph (b)(6) of this clause.

(5) *GFI commercial computer software marked with commercial restrictive markings.*

(i) The Contractor shall use, modify, reproduce, perform, or display commercial computer software, or segregation or reintegration data pertaining to commercial computer software, received from the Government with commercial restrictive markings (*i.e.,* marked to indicate that such software are subject to use, modification, reproduction, release, performance, display, or disclosure restrictions) only in the performance of this contract and only for activities, if any, that are authorized in the applicable commercial license or any additional specially negotiated license rights (pursuant to DFARS 227.7202–3). The Contractor shall not, without the express written permission of the party asserting such restrictions, use the computer software for any other unauthorized purpose, or release or disclose such software to any unauthorized person.

(ii) The Contractor shall ensure that the party asserting restrictions is notified prior to such authorized release or disclosure.

(iii) The Contractor shall destroy (or return to the Government at the request of the Contracting Officer) the software and all copies in its possession promptly following completion of the authorized activities under this contract, and shall notify the party asserting restrictions that the data or software has been destroyed (or returned to the Government).

(6) * * *

(iii) The Contractor will ensure that the party whose name appears in the legend or marking is notified of the release or disclosure as soon as practicable, but not later than 30 days after such release or disclosure;

* * * * *

(e) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

252.227–7027 [Removed and Reserved.]

■ 33. Remove and reserve section 252.227–7027.

■ 34. Add section 252.227–7029 to read as follows:

252.227–7029 Deferred Ordering of Technical Data or Computer Software.

As prescribed at 227.7102–4(d), 227.7103–8(c)(2), 227.7104(e)(4), 227.7202–4(c), and 227.7203–8(c)(2), use the following clause:

DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (DATE)

(a) *Definitions.* As used in this clause—

Applied research and *development* are defined at FAR 35.001.

Commercial computer software, computer software, computer software documentation, detailed manufacturing or process data, developed, developed exclusively at private expense, developed exclusively with Government funds, developed with mixed funding, form, fit, and function data, segregation or reintegration data, and *technical data* are defined in the DFARS at—

(1) 252.227–7013, Rights in Technical Data—Noncommercial Items;

(2) 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation;

(3) 252.227–7015, Technical Data—Commercial Items; and

(4) 252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

Commercially available off-the-shelf software means computer software that is a commercially available off-the-shelf item.

Form, fit, and function data means technical data or computer software that describes the required overall physical, logical, configuration, mating, attachment, interface, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item or process to the extent necessary to permit identification of physically or functionally equivalent items or processes. The term does not include computer software source code, or detailed manufacturing or process data.

Segregation or reintegration data means technical data or computer software that is more detailed than form, fit, and function data and that is necessary for the segregation of an item or process from, or the reintegration of that item or process (or a physically or functionally equivalent item or process) with, other items or processes.

(1) Unless agreed otherwise by the Government and the contractor, the nature, quality, and level of technical detail necessary for these data or software shall be that required for persons reasonably skilled in the art to

perform such segregation or reintegration activities.

(2) The segregation or reintegration of any such an item or process may be performed at any practical level, including down to the lowest practicable segregable level, *e.g.,* a subitem or subcomponent level, or any segregable portion of a process, computer software (*e.g.,* a software subroutine that performs a specific function), or documentation.

(3) The term—

(i) Includes data or software that describes in more detail (than form, fit, and function data) the physical, logical, or operational interface or similar functional interrelationship between the items or processes; and

(ii) May include, but would not typically require, detailed manufacturing or process data or computer software source code to support such segregation or reintegration activities.

Technical data or computer software generated or utilized in the performance of this contract or any subcontract hereunder means—

(1) Technical data or computer software developed in the performance of this contract or any subcontract hereunder;

(2) Technical data pertaining to an item or process that is developed, delivered, or incorporated into the design of a system, in the performance of this contract or any subcontract hereunder;

(3) Computer software or computer software documentation pertaining to computer software designed, developed, or delivered in the performance of this contract or any subcontract hereunder;

(4) Technical data or computer software used to provide services in the performance of this contract or any subcontract hereunder; or

(5) Technical data or computer software, other than commercially available off-the-shelf software, necessary to access, use, reproduce, modify, perform, display, release, or disclose any of the technical data or computer software identified in paragraphs (1) through (4) of this definition.

(b) In addition to technical data or computer software specified elsewhere in this contract to be delivered or otherwise furnished hereunder, the Government may at any time order technical data or computer software as follows:

(1) Except as provided in paragraph (b)(2) of this clause, the Government may require delivery of any technical data or computer software generated or utilized in the performance of this contract or any subcontract hereunder, upon a determination by the Government that the technical data or computer software—

(i) Is needed for the purpose of development, production, reprocurement, sustainment, modification, or upgrade (including through competitive means) of—

(A) A major system or subsystem thereof;

(B) A weapon system or subsystem thereof;

(C) Any noncommercial item; or

(D) Any portion of a commercial item that was either developed exclusively with Government funds or developed with mixed funding, or that was a modification made at Government expense; and

(ii) Either—

(A) Pertains to an item or process that was either developed exclusively with Government funds or developed with mixed funding;

(B) Was generated either exclusively with Government funds or with mixed funding in cases when contract performance did not involve the development of an item or process; or

(C) Is form, fit, and function data, or segregation or reintegration data.

(2) For technical data or computer software resulting from basic research or applied research, the Government is not required to make the determination that such technical data or computer software is needed for the purposes set forth at paragraph (b)(1)(i).

(c) If the Contractor asserts in writing to the Contracting Officer that technical data or computer software that is or may be covered by a determination in paragraph (b)(1)(ii)(A) or (B) of this clause pertains to an item or process developed exclusively at private expense, the contractor's assertion shall include information sufficient for the Contracting officer to evaluate the assertion, and that assertion shall be governed by the applicable procedures for validation of asserted restrictions at DFARS 252.227–7019, Validation of Asserted Restrictions—Computer Software, or 252.227–7037, Validation of Asserted Restrictions on Technical Data. Any other assertion or disagreement shall be governed by the applicable disputes clause.

(d) This clause shall not be interpreted as imposing an obligation on the Contractor to preserve any technical data or computer software covered by this clause for longer than a reasonable period. However, this does not restrict the Government from including a contract requirement for the Contractor to preserve such technical data or computer software for a specific period.

(e) When technical data or computer software is ordered under paragraph (b) of this clause, the Contractor shall be compensated only for reasonable costs incurred for converting and delivering the technical data or computer software into the required form.

(f) The Government's rights to use such technical data or computer software shall be pursuant to the applicable rights in technical data and computer software clause(s), or pursuant to DFARS 227.7202 in the case of commercial computer software, in effect as of the date of award of this contract.

(g) The Government may exercise its deferred ordering rights by any means available for ordering technical data or computer software, including unilateral contract modification. Nothing contained in this clause shall be construed as altering or limiting the ability of the Government to order technical data (including computer software documentation) or computer software by mutual agreement with the Contractor. The rights provided to the Government in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(h) The Government is not foreclosed from requiring the delivery of the technical data or computer software by a failure to challenge, in accordance with the requirements of the applicable validation of asserted restrictions or restrictive markings clause, the contractor's assertion of a use or release restriction on the technical data or computer software.

(i) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(j) *Flowdown.* The Contractor or subcontractor shall insert this clause in contractual instruments with its subcontractors or suppliers at any tier, including subcontracts for commercial items, except for subcontracts solely for commercial items that are not being acquired for—

(1) A major system or subsystem thereof; or

(2) A weapon system or subsystem thereof.

(End of clause)

■ 35. Amend section 252.227–7037 by—

■ a. Revising the heading, introductory text, clause title, and clause date;

■ b. Revising paragraph (c);

■ c. Revising paragraph (d)(1);

■ d. Revising paragraph (d)(2);

■ e. In paragraph (d)(3), removing "marking" and adding "asserted restriction" in its place wherever it appears; and removing "item, component, or process" and adding "item or process" in its place;

■ f. Revising paragraph (e)(1) introductory text;

■ g. In paragraph (e)(1)(ii), removing "sixty (60) days" and adding "60 days" in its place;

■ h. Revising paragraph (e)(1)(iii);

■ i. In paragraph (e)(4), removing "restrictive markings" and adding "asserted restrictions" in its place;

■ j. In paragraph (g)(1), removing "restrictive marking" and adding "asserted restriction" in its place wherever it appears; and removing "sixty (60) days" and adding "60 days" in its place in two places;

■ k. In paragraph (g)(2)(i), removing "restrictive marking" and adding "asserted restriction" in its place; and removing "sixty (60) days" and adding "60 days" in its place in two places;

■ l. Revising paragraph (g)(2)(ii);

■ m. Revising paragraph (g)(2)(iii);

■ n. In paragraph (g)(2)(iv), removing "restrictive markings" and adding "asserted restrictions" in its place in two places;

■ o. In paragraph (h)(1)(i), removing "restrictive marking" and adding "restrictive marking supported by the asserted restrictions" in its place;

■ p. Revising paragraph (h)(1)(ii);

■ q. Revising paragraph (i);

■ r. Revising paragraph (j); and

■ s. Revising paragraph (k).

The revisions read as follows:

252.227–7037 Validation of Asserted Restrictions on Technical Data.

As prescribed in 227.7102–4(e), 227.7103–6(e)(3), 227.7104(e)(5), or 227.7203–6(f), use the following clause:

VALIDATION OF ASSERTED RESTRICTIONS ON TECHNICAL DATA (DATE)

* * * * *

(c) *Justification*. The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its asserted restrictions on the rights of the Government and others to use, duplicate, release or disclose technical data delivered; required to be delivered, or otherwise provided to the Government under the contract or subcontract. Except as provided in paragraph (b)(1) of this clause, the Contractor or subcontractor shall be prepared to furnish to the Contracting Officer a written justification for such asserted restrictions in response to a challenge under paragraph (e) of this clause.

(d) * * *

(1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any asserted restriction on the right of the United States or others to use, disclose, or release technical data, or an assertion under paragraph (c) of DFARS 252.227–7029, Deferred Ordering of Technical Data or Computer Software. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the asserted restriction, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any asserted restriction on technical data delivered, to be delivered, or otherwise provided to the Government under the contract or subcontract (*e.g.*, a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (d)(1) of this clause, or any other available information pertaining to the validity of an asserted restriction, determines that reasonable grounds exist to question the current validity of the asserted restriction and that continued adherence to the asserted restriction would make impracticable the subsequent competitive acquisition of the item or process to which the technical data relates, the Contracting Officer shall follow the procedures in paragraph (e) of this clause.

* * * * *

(e) * * *

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the asserted restriction is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor making the asserted restriction. Such challenge shall—

* * * * *

(iii) State that a DoD Contracting Officer's final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a prior asserted restriction identical to the current asserted restriction, within the 3-year period preceding the current challenge, shall serve as justification for the current asserted restriction if the prior validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided; and

* * * * *

(g) * * *

(2) * * *

(ii) The Government agrees that it will continue to be bound by the asserted restriction for a period of 90 days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within 90 days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the 90-day period, the Government may cancel or ignore the restrictive markings supported by the asserted restriction, or may require delivery of the technical data or computer software covered by the asserted restriction pursuant to DFARS 252.227–7029, Deferred Ordering of Technical Data or Computer Software, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the asserted restriction where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within 90 days from the issuance of the final decision under paragraph (g)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings supported by the asserted restrictions, if the Contractor or subcontractor fails to file its suit within 1 year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its asserted restrictions are ultimately upheld or to pursue other relief, if any, as may be provided by law.

* * * * *

(h) * * *

(1) * * *

(ii) If the asserted restriction is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the asserted restriction supporting the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the asserted restriction supporting the restrictive marking, unless special circumstances would make such payment unjust.

* * * * *

(i) *Duration of right to challenge.* The Government may review the validity of any restriction on technical data, delivered, to be delivered, or otherwise provided to the Government under a contract, asserted by the Contractor or subcontractor. During the period within 6 years of final payment on a contract or within 6 years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the asserted restriction. The Government may, however, challenge an asserted restriction on the release, disclosure or use of technical data at any time if such technical data—

(1) Are publicly available;

(2) Have been furnished to the United States without restriction;

(3) Have been otherwise made available without restriction; or

(4) Are the subject of a fraudulently asserted use or release restriction.

(j) *Decision not to challenge.* A decision by the Government, or a determination by the Contracting Officer, to not challenge the asserted restriction supporting a restrictive marking shall not constitute "validation." Only the Contracting Officer's final decision or actions of an agency Board of Contract Appeals or a court of competent jurisdiction that sustains the validity of an asserted restriction constitute validation of the restriction.

(k) *Privity of contract.* The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictions on the right of the United States or others to use, disclose or release technical data. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

* * * * *

[FR Doc. 2016–14266 Filed 6–15–16; 8:45 am]

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Part VI

Commodity Futures Trading Commission

17 CFR Part 50
Clearing Requirement Determination Under Section 2(h) of the CEA for Interest Rate Swaps; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 50

RIN 3038–AE20

Clearing Requirement Determination Under Section 2(h) of the CEA for Interest Rate Swaps

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend the Commission's rules to establish a new clearing requirement under the pertinent section of the Commodity Exchange Act (CEA). The amended regulation would require that interest rate swaps denominated in certain currencies or having certain termination dates, as described herein, be submitted for clearing by persons required to do so under the pertinent section of the CEA to a derivatives clearing organization (DCO) that is registered under the CEA (registered DCO) or a DCO that has been exempted from registration under the CEA (exempt DCO).

DATES: Comments must be received on or before July 18, 2016.

ADDRESSES: You may submit comments, identified by RIN number 3038–AE20, by any of the following methods:

- *CFTC Web site: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the Web site.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Sarah E. Josephson, Deputy Director, Division of Clearing and Risk (DCR), at 202–418–5684 or *sjosephson@cftc.gov*; Peter A. Kals, Special Counsel, DCR, at 202–418–5466 or *pkals@cftc.gov*; Melissa A. D'Arcy, Special Counsel, DCR, at 202–418–5086 or *mdarcy@cftc.gov*; Meghan A. Tente, Special Counsel, DCR, at 202–418–5785 or *mtente@cftc.gov*; Michael A. Penick, Economist, Office of the Chief Economist (OCE), at 202–418–5279 or *mpenick@cftc.gov*; or Lihong McPhail, Research Economist, OCE, at 202–418–5722 or *lmcphail@cftc.gov,* in each case at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

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I. Background

A. The Commission's First Clearing Requirement Determination

In December 2012, pursuant to section 2(h)(1)(A) of the CEA, which was added to the CEA by section 723 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Commission published its first clearing requirement determination (First Clearing Requirement Determination).[2] The First Clearing Requirement Determination was implemented between March 2013 and October 2013 based on the schedule described in regulation 50.25 and the preamble to the First Clearing Requirement Determination.[3]

The First Clearing Requirement Determination required the clearing of swaps within four classes of interest rate swaps and two classes of credit default swaps (CDS) that meet certain specifications. The Commission focused on these interest rate swaps and CDS in the First Clearing Requirement Determination because of the size of these markets relative to the derivatives market overall and because these swaps were already widely being cleared.[4]

The four classes of interest rate swaps required to be cleared by the First Clearing Requirement Determination were: (i) Fixed-to-floating swaps; (ii) basis swaps; (iii) overnight index swaps (OIS); and (iv) forward rate agreements (FRAs). As set forth in regulation 50.4(a), each class is limited to swaps having certain specifications pertaining to: (i) The currency in which the notional and payment amounts are specified; (ii) the floating rate index referenced in the swap; (iii) the stated termination date; (iv) optionality; (v) dual currencies; and (vi) conditional notional amounts.

With respect to the currency specification, the Commission limited the interest rate swaps required to be cleared to those denominated in U.S. dollars (USD), Euros (EUR), British pounds (GBP), and Japanese yen (JPY). In coming to this decision, the Commission noted that the interest rate swaps denominated in these currencies accounted for an outsized portion of the entire interest rate swap market in terms of both notional amounts outstanding and trading volumes compared to interest rate swaps denominated in other currencies.[5] The Commission also noted that it expected to publish a clearing requirement determination for interest rate swaps denominated in additional currencies in the future.[6] For the reasons discussed below, the clearing requirement determination proposed today would amend the First Clearing Requirement Determination to add a requirement to clear fixed-to-floating interest rate swaps denominated in nine additional currencies in which Chicago Mercantile Exchange, Inc. (CME), Eurex Clearing AG (Eurex), LCH.Clearnet Ltd. (LCH), and Singapore Exchange Derivatives Clearing Ltd. (SGX), each a Commission-registered DCO, clear interest rate swaps.[7] These additional currencies are Australian dollar (AUD), Canadian dollar (CAD), Hong Kong dollar (HKD), Mexican peso (MXN), Norwegian krone (NOK), Polish zloty (PLN), Singapore dollar (SGD), Swedish krona (SEK), and Swiss franc (CHF) (collectively, the nine additional currencies).[8] The clearing requirement determination proposed today also would require the clearing of certain basis swaps denominated in AUD, which are currently cleared by CME and LCH. Under the First Clearing Requirement Determination, certain basis swaps denominated in USD, EUR, GBP, and JPY must be cleared. The proposal also would require the clearing of certain AUD-, NOK-, PLN-, and SEK-denominated FRAs. Under the First Clearing Requirement Determination, certain FRAs denominated in USD, EUR, GBP, and JPY must be cleared.

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[1] 17 CFR 145.9. Commission regulations referred to herein are found on the Commission's Web site at *http://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm.*

[2] Clearing Requirement Determination Under Section 2(h) of the CEA, 77 FR 74284 (Dec. 13, 2012) (codified at 17 CFR 50.1 through 50.10).

[3] *See* 17 CFR 50.25; 77 FR at 74319–21.

[4] *See* 77 FR at 74287.

[5] *Id.* at 74308.

With respect to the stated termination date specification, which also is referred to as the maturity of an interest rate swap, the First Clearing Requirement Determination stated that, for OIS denominated in USD, EUR, and GBP, the range of termination dates subject to the clearing requirement was 7 days to 2 years. At the time, the Commission found that OIS with termination dates within this range warranted a clearing requirement determination because they had sufficient notional outstanding and trading liquidity necessary for a DCO to successfully risk manage and price them.[9]

When the First Clearing Requirement Determination was published, CME had not yet begun clearing OIS with termination dates greater than two years, and, although LCH had been offering such OIS for clearing, LCH data did not show any outstanding notional for these OIS.[10] Both LCH and CME now clear OIS out to 30 years, and Eurex offers to clear OIS out to 30 years as well. For the reasons discussed herein, the clearing requirement determination proposed today also would amend the First Clearing Requirement Determination to require the clearing of OIS with termination dates out to three years. Finally, the clearing requirement determination proposed today also would require the clearing of OIS denominated in AUD and CAD.

B. Clearing Requirements in Other Jurisdictions

Following is a summary of actions taken by other jurisdictions towards implementing clearing requirements for interest rate swaps denominated in the nine additional currencies. The Commission believes that it is important to harmonize its swap clearing requirement with clearing requirements promulgated in other jurisdictions. For example, if a non-U.S. jurisdiction issued a clearing requirement and a swap dealer (SD) located in the U.S. were not subject to that non-U.S. clearing requirement, then a swap market participant located in the non-U.S. jurisdiction might be able to avoid the non-U.S. clearing requirement by entering into a swap with the SD located in the U.S.

As the Commission reviewed the regulation 39.5(b) submissions from DCOs, it considered whether those products offered for clearing at DCOs were subject, or were likely to be subject, to a clearing requirement in another jurisdiction. For those products that were the subject of a clearing requirement rule or proposal outside of the U.S., the Commission reviewed the product specifications of the products and the processes used by non-U.S. regulators. In addition, the Commission reviewed data produced in connection with any rule proposals or final rules implementing a clearing requirement in non-U.S. jurisdictions. Finally, the Commission considered comments submitted in response to clearing determination rule proposals in non-U.S. jurisdictions and any subsequent changes that regulators made to final rules implementing a clearing requirement. The Commission was informed by its review of non-U.S. jurisdictions' clearing requirement determinations and considered those determinations in preparing this proposed determination.

Accordingly, the scope of the swaps included in this proposal reflects the Commission's desire to harmonize with our counterparts abroad and is informed by the work of those regulators, as described below. In addition, the specifications of the swaps included in this proposed determination are intended to be consistent with those referenced in clearing requirements published by the Commission's counterparts abroad.

i. Australia

The Australian Securities and Investments Commission (ASIC) has published regulations that will require certain Australian and non-Australian entities to clear AUD-, USD-, GBP-, EUR-, and JPY-denominated fixed-to-floating interest rate swaps, basis swaps, and FRAs, as well as AUD-, USD-, GBP-, and EUR-denominated OIS.[11] The regulations' swap classes are co-extensive to those described in existing Commission regulation 50.4(a) except for the addition of AUD-denominated swaps. The Commission's clearing requirement proposal would make its AUD-denominated swaps in the fixed-to-floating interest rate swap, basis swap, FRA, and OIS classes consistent with the AUD-denominated swaps required to be cleared by ASIC. The Australian clearing requirement commenced for certain financial entities in April 2016.[12]

ii. Canada

In 2015, the Canadian Office of the Superintendent of Financial Institutions (OSFI) issued a "guideline" requiring certain Canadian financial institutions, as well as Canadian branches of non-

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[6] *Id.* at 74309. In the First Clearing Requirement Determination, the Commission also stated that it intended to consider other swaps submitted by DCOs, such as agricultural, energy, and equity indices, as well as additional classes of CDS for a possible clearing requirement determination. *See id.* at 74287 and n.24. The Commission is committed to reviewing all swaps submitted by DCOs to determine whether such swaps should be required to be cleared, although it is possible that the Commission may determine that certain of these swaps are not appropriate for required clearing at this time. Finally, the Commission also may consider other classes of swaps for a clearing requirement determination, including additional types of CDS, as well as certain foreign exchange swaps, such as non-deliverable forwards.

[7] Two DCOs that the Commission has exempted from registration, ASX Clear (Futures) Pty Ltd. (Australia) and OTC Clearing Hong Kong Ltd., clear some of the swaps covered by this proposed determination (AUD- and HKD-denominated interest rate swaps, respectively). Pursuant to Commission orders, these two DCOs are permitted to clear for U.S. proprietary accounts but not for U.S. customers. In addition, these DCOs have not submitted filings under Commission regulation 39.5(b). Consequently, this proposal addresses only those registered DCOs that have submitted swaps for consideration under CFTC regulations.

[8] *See* Table 1 for information as to which registered DCOs clear fixed-to-floating interest rate swaps denominated in which currencies.

[9] *Id.* at 74310.

[10] *Id.*

[11] ASIC Derivative Transaction Rules (Clearing) 2015, available at: *https://www.comlaw.gov.au/Details/F2015L01960.*

[12] According to section 1.2.7 of the ASIC Derivative Transaction Rules (Clearing) 2015, the clearing requirement commenced on April 4, 2016, the first "Clearing Start Date."

Canadian financial institutions, to clear "standardized derivatives where practicable." [13] Also, in 2015, Canada's provincial securities regulators published a draft rule that would require certain derivatives to be cleared.[14] On February 24, 2016, the Canadian provincial securities regulators published a revised draft rule that proposes subjecting the following classes of interest rate swaps to a clearing mandate: CAD-, USD-, EUR-, and GBP-denominated fixed-to-floating interest rate swaps, basis swaps, and FRAs, as well as CAD-, USD-, EUR-, and GBP-denominated OIS.[15] The Canadian provincial securities regulators' revised rule is expected to be finalized in 2016. The CAD-denominated swaps included in the Commission's proposal are covered by the Canadian provincial securities regulators' revised rule.

iii. European Union

On August 6, 2015, the European Commission adopted an interest rate swap clearing requirement that the European Securities and Markets Authority (ESMA) developed pursuant to the European Market Infrastructure Regulation (EMIR).[16] The European interest rate swap class is coextensive with current Commission regulation 50.4(a), except that with respect to OIS, the European class covers OIS with a termination date range of up to three years instead of two. Like current regulation 50.4(a), the European class covers interest rate swaps denominated in USD, EUR, GBP, and JPY, not in any of the nine additional currencies.[17] Compliance with the European clearing requirement will be phased in between 2016 and 2018 depending on the type of counterparty.[18]

In November 2015, following the close of a comment period, ESMA recommended to the European Commission that the European Union Clearing Obligation be expanded to cover NOK-, PLN-, and SEK-denominated fixed-to-floating interest rate swaps and FRAs.[19] The NOK-, PLN-, and SEK-denominated fixed-to-floating interest rate swaps and FRAs included in the Commission's proposal are covered by ESMA's recommendation to the European Commission.[20]

iv. Hong Kong

On February 5, 2016, the Hong Kong Securities and Futures Commission and the Hong Kong Monetary Authority jointly published conclusions to a consultation paper proposing mandatory clearing for certain interest rate swaps.[21] The regulators submitted draft rules to the Legislative Council to implement a clearing requirement covering fixed-to-floating interest rate swaps and basis swaps denominated in USD, GBP, EUR, JPY, and HKD, as well as OIS denominated in USD, GBP, and EUR.[22] The legislative process has been completed, and the final rules are to take effect in September 2016.[23] The HKD-denominated interest rate swaps included in the Commission's proposal are covered by the Hong Kong Securities and Futures Commission and the Hong Kong Monetary Authority's final rules.

v. Mexico

In 2015, Banco de Mexico, the Mexican central bank, published a clearing requirement mandating that certain Mexican financial institutions clear MXN-denominated fixed-to-floating interest rate swaps having a termination date range of approximately two months to 30 years and that reference the Mexican "Interbank Equilibrium Interest Rate" (TIIE).[24] The clearing requirement became effective for certain Mexican counterparties on April 1, 2016. The clearing requirement will commence for certain non-Mexican counterparties executing swaps opposite Mexican counterparties during the second half of 2016.[25] The MXN-denominated interest rate swaps included in the Commission's proposal are covered by the Banco de Mexico's clearing requirement.

vi. Singapore

In 2015, the Monetary Authority of Singapore (MAS) published proposed regulations that would require the clearing of SGD-denominated fixed-to-floating interest rate swaps referencing the Swap Offer Rate (SOR) and USD-denominated fixed-to-floating interest rate swaps referencing LIBOR.[26] The SGD-denominated interest rate swaps included in the Commission's proposal are covered by the MAS's proposed regulations.

vii. Switzerland

In 2015, the Swiss parliament adopted legislation providing a framework for a swap clearing requirement. A clearing requirement is expected to be phased in during the second half of 2016. It is not yet known which products such a clearing requirement would cover.[27]

C. Regulatory Background

Like the First Clearing Requirement Determination, the clearing requirement proposed herein would require the clearing of certain interest rate swaps pursuant to section 2(h) of the CEA. Under section 2(h)(1)(A) of the CEA, it is unlawful for any person to engage in a swap unless that person submits such swap for clearing to a DCO that is registered under the CEA or a DCO that is exempt from registration under the CEA if the swap is required to be cleared. A clearing requirement determination may be initiated by a swap submission from a registered DCO.[28] Section 2(h)(2)(B)(i) of the CEA requires a DCO to submit to the Commission each swap, or any group, category, type, or class of swaps that it plans to accept for clearing and provide notice to its members of the submission. Regulation 39.5(b) implements the procedural elements of section 2(h)(2)(B)–(C) by establishing the procedures for the submission of swaps by a DCO to the Commission for a clearing requirement determination.[29]

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[13] Derivatives Sound Practices Guideline, available at: *http://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/b7.aspx#toc3*.

[14] Draft National Instrument 94–101 respecting Mandatory Central Counterparty Clearing of Derivatives. Summary available at: *http://www.albertasecurities.com/Regulatory%20Instruments/5022685-v5-Proposed_NI_94-101_package.pdf*.

[15] Draft Regulation 94–101 respecting Mandatory Central Counterparty Clearing of Derivatives (2nd Publication). Summary available at: *http://www.lautorite.qc.ca/files/pdf/reglementation/instruments-derives/reglements/94-101/2016-02-24/2016fev24-94-101-avis-cons-en.pdf*.

[16] European Commission press release announcing the European Clearing Obligation, available at: *http://europa.eu/rapid/press-release_IP-15-5459_en.htm*.

[17] Regulation (EU) No. 648/2012. *See* Revised Opinion, Draft RTS on the Clearing Obligation on Interest Rate Swaps, Annex I, pages 24–25 (Mar. 6, 2015), available at: *https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-511_revised_opinion_on_draft_rts_on_the_clearing_obligation.pdf*.

[18] *Id.* at 21–23 (Articles 2–5).

[19] *https://www.esma.europa.eu/sites/default/files/library/2015/11/esma-2015-1629_-final_report_clearing_obligation_irs_other_currencies.pdf*.

[20] Poland and Sweden are members of the European Union, but Norway is not.

[21] Consultation Conclusions and Further Consultation on Introducing Mandatory Clearing and Expanding Mandatory Reporting, available at: *http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/conclusion?refNo=15CP4*.

[22] *Id. See also* Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules, The Government of the Hong Kong Special Administrative Region Gazette, available at: *http://www.gld.gov.hk/egazette/pdf/20162005/es22016200528.pdf*.

[23] *Id.*

[24] Rules for Derivatives Transactions (Circular 4/2012), Banco de México, available at: *http://www.banxico.org.mx/disposiciones/circulares/%7BD7250B17-13A4-B0B7-F4E5-04AF29F37014%7D.pdf*.

[25] *See* Financial Stability Board, Ninth Progress Report on Implementation, OTC Derivatives Market Reforms, Appendix D (Timetable for Implementation of Central Clearing Commitment) (July 24, 2015), available at: *http://www.financialstabilityboard.org/wp-content/uploads/OTC-Derivatives-Ninth-July-2015-Progress-Report.pdf* [hereinafter "Ninth Progress Report on Implementation"], at Appendix D.

[26] Summary published by MAS available at: *http://www.mas.gov.sg/News-and-Publications/Media-Releases/2015/MAS-Consults-on-Proposed-Regulations-for-Mandatory-Clearing-of-OTC-Derivatives.aspx*. *See also* Ninth Progress Report on Implementation, at Appendix D.

[27] *See* Ninth Progress Report on Implementation, at Appendix D.

[28] Section 2(h)(2) of the CEA provides the Commission with authority to issue a determination that a swap is required to be cleared pursuant to two separate review processes. CEA section 2(h)(2)(A) provides for a Commission-initiated review process whereby the Commission, on an

D. Commission Processes for Review and Surveillance of DCOs

i. Part 39 Regulations Set Forth Standards for Compliance

Section 5b(c)(2) of the CEA sets forth 18 core principles with which DCOs must comply to be registered and to maintain registration. The core principles address numerous issues, including financial resources, participant and product eligibility, risk management, settlement procedures, default management, system safeguards, reporting, recordkeeping, public information, and legal risk.

Each of the DCOs that submitted the interest rate swaps that are the subject of this proposed determination are registered with the Commission. The DCOs' regulation 39.5(b) submissions discussed herein identify swaps that the DCOs are currently clearing. Consequently, the Commission has been reviewing and monitoring compliance by the DCOs with the core principles for clearing the submitted swaps.

The primary objective of the Commission's supervisory program is to ensure compliance with applicable provisions of the CEA and implementing regulations, and, in particular, the core principles applicable to DCOs. A primary concern of the program is to monitor and mitigate potential risks that can arise in derivatives clearing activities for the DCO, its members, and entities using the DCO's services. Accordingly, the Commission's supervisory program takes a risk-based approach.

In addition to the core principles set forth in section 5b(c)(2) of the CEA, section 5c(c) of the CEA governs the procedures for review and approval of new products, new rules, and rule amendments submitted to the Commission by DCOs. Part 39 of the Commission's regulations implements sections 5b and 5c(c) of the CEA by establishing specific requirements for compliance with the core principles, as well as procedures for registration, for implementing DCO rules, and for clearing new products. Part 40 of the Commission's regulations sets forth additional provisions applicable to a DCO's submission of rule amendments and new products to the Commission.

The Commission has means to enforce compliance, including the Commission's ability to sue the DCO in federal court for civil monetary penalties,[30] issue a cease and desist order,[31] or suspend or revoke the registration of the DCO.[32] In addition, any deficiencies or other compliance issues observed during ongoing monitoring or an examination are frequently communicated to the DCO and various measures are used by the Commission to ensure that the DCO appropriately addresses such issues, including escalating communications within the DCO management and requiring the DCO to demonstrate, in writing, timely correction of such issues.

ii. Initial Registration Application Review and Periodic In-Depth Reviews

Section 5b of the CEA requires a DCO to register with the Commission. In order to do so, an organization must submit an application demonstrating that it complies with the core principles. During the review period, the Commission generally conducts an on-site review of the prospective DCO's facilities, asks a series of questions, and reviews all documentation received. The Commission may ask the applicant to make changes to its rules to comply with the CEA and the Commission's regulations.

After registration, the Commission conducts examinations of DCOs to determine whether the DCO is in compliance with the CEA and Commission regulations. The examination consists of a planning phase where staff reviews information the Commission has on hand to determine whether the information raises specific issues and to develop an examination plan. The examination team participates in a series of meetings with the DCO at its facility. Commission staff also communicates with relevant DCO staff, including senior management, and reviews documentation. Data produced by the DCO is independently tested. Finally, when relevant, walk-through testing is conducted for key DCO processes.

Commission staff also reviews DCOs that are systemically important (SIDCOs) at least once a year. CME has been determined to be a SIDCO.

iii. Commission Daily Risk Surveillance

Commission risk surveillance staff monitors the risks posed to and by DCOs, clearing members, and market participants, including market risk, liquidity risk, credit risk, and concentration risk. The analysis includes review of daily, large trader reporting data obtained from market participants, clearing members, and DCOs, which is available at the trader, clearing member, and DCO levels. Relevant margin and financial resources information also is included within the analysis.

Commission staff regularly conducts back testing to review margin coverage at the product level and follows up with the relevant DCO regarding any exceptional results. Independent stress testing of portfolios is conducted on a daily, weekly, and ad hoc basis. The independent stress tests may lead to individual trader reviews and/or futures commission merchant (FCM) risk reviews to gain a deeper understanding of a trading strategy, risk philosophy, risk controls and mitigants, and financial resources at the trader and/or FCM level. The traders and FCMs that have a higher risk profile are then reviewed during the Commission's on-site review of a DCO's risk management procedures.

Given the importance of DCOs within the financial system and the heightened scrutiny as more transactions are moved into central clearing, the goal of the Commission risk surveillance staff is: (1) To identify positions in cleared products subject to the Commission's jurisdiction that pose significant financial risk; and (2) to confirm that these risks are being appropriately managed. Commission risk surveillance staff undertakes these tasks at the trader level, the clearing member level, and the DCO level. That is, staff identifies both traders that pose risks to clearing members and clearing members that pose risks to the DCO. Staff then evaluates the financial resources and risk management practices of traders, clearing members, and DCOs in relation to those risks. Commission risk

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ongoing basis, must review swaps (or a group, category, type or class of swaps) to make a determination as to whether a swap (or group, category, type or class of swaps) should be required to be cleared. The other process provided under section 2(h)(2)(B) of the CEA entails the Commission's review of swaps that are submitted by DCOs. Specifically, CEA section 2(h)(2)(B)(i) requires that each DCO submit to the Commission each swap (or group, category, type or class of swaps) that it plans to accept for clearing. The swaps subject to this proposed determination were submitted by DCOs pursuant to CEA section 2(h)(2)(B)(i) and Commission regulation 39.5.

[29] Section 2(h)(2)(B)–(C) of the CEA describes the process pursuant to which the Commission is required to review swap submissions from DCOs to determine whether the swaps should be subject to the clearing requirement.

[30] *See* section 6c of the CEA.

[31] *See* section 6b of the CEA.

[32] *See* section 5e of the CEA.

surveillance staff routinely monitors conditions in assigned markets throughout the day. Because of the work done in identifying accounts of interest, analysts are able to focus their efforts on those traders whose positions warrant heightened scrutiny under current conditions.

To gain insight into how markets operate during stressed market conditions, an essential technique in evaluating risk is the use of stress testing. Stress testing is the practice of determining the potential loss (or gain) to a position or portfolio based on a hypothetical price change or a hypothetical change in a price input such as option volatility. Commission risk surveillance staff conducts a wide array of stress tests. Some stress tests are based on the greatest price move over a specified period of time such as the last five years or the greatest historical price change. Another stress testing technique is the use of "event based" stress testing that replicates the price changes on a particular date in history, such as September 11, 2001, or Hurricane Katrina. Price changes can be measured as a dollar amount or a percentage change. This flexibility can be helpful when price levels have changed by a large amount over time. For example, the actual price changes in equity indices in October 1987 are not particularly large at today's market levels but the percentage changes are meaningful.

The general standard in designing stress tests is to use "extreme but plausible" market moves. After identifying accounts at risk and estimating the size of the risk, the third step is to compare that risk to the assets available to cover it. Because stress testing, by definition, involves extreme moves, hypothetical results will exceed initial margin requirements on a product basis, *i.e.*, the price moves will be in the 1% tail. Many large traders, however, carry portfolios of positions with offsetting characteristics. In addition, many traders and clearing members deposit excess initial margin in their accounts. Therefore, even under stressed conditions, in many instances the total initial margin available may exceed potential losses or the shortfall may be relatively small.

Each DCO maintains a financial resources package that protects the DCO against clearing member defaults. If a clearing member defaults on its obligations, the first layer of protection against a DCO default is the defaulting clearing member's initial margin as well as the defaulting clearing member's guaranty fund contribution. The second layer of protection against a DCO default, after the defaulting clearing member's initial margin and guaranty fund contribution, is the DCO's capital contribution. The third layer of protection against a DCO default is the DCO's mutualized resources, which often include guaranty fund contributions of non-defaulting clearing members and assessments of non-defaulting clearing members. These layers of protection comprise the DCO's financial resources package.

Commission risk surveillance staff compares the level of risk posed by clearing members to a DCO's financial resources package on an ongoing basis. Pursuant to Commission regulation 39.11(a), a DCO must have sufficient financial resources to cover a default by the clearing member posing the largest risk to the DCO. Pursuant to Commission regulation 39.33(a), a systemically important DCO must have sufficient financial resources to cover defaults by the clearing members posing the two largest risks to the DCO. Commission risk surveillance staff periodically compares stress test results with DCOs to assess their financial capacity.

Commission risk surveillance staff frequently discusses the risks of particular accounts or positions with relevant DCOs. For example, as a follow-up to a trader review, Commission risk surveillance staff might compare its stress test results with those of the DCO. As also noted above, in the case of FCMs, there have been instances where, as a result of Commission risk surveillance staff comments or inquiries, DCOs have taken action to revise their stress tests and/or financial resources package to align with Commission risk surveillance staff's recommendations.

II. Review of Swap Submissions

A. General Description of Information Considered

CME and LCH provided the Commission with regulation 39.5(b) submissions relating to: Fixed-to-floating interest rate swaps denominated in the nine additional currencies; AUD-denominated basis swaps; and USD-, EUR-, and GBP-denominated OIS with termination dates of up to 30 years. CME and LCH provided § 39.5(b) submissions pertaining to the FRAs and OIS listed in Table 1, below. CME and SGX provided submissions relating to MXN- and SGD-denominated fixed-to-floating interest rate swaps, respectively. Eurex provided a submission relating to CHF-denominated fixed-to-floating interest rate swaps and OIS denominated in USD, EUR, and GBP with terms up to 30 years plus 10 business days.[33] Based on representations made by LCH to the Commission, LCH will begin offering MXN-denominated fixed-to-floating interest rate swaps during 2016. CME, Eurex, LCH, and SGX are eligible to clear interest rate swaps.[34]

Table 1 summarizes the relevant interest rate swaps submitted by CME, Eurex, LCH, and SGX.

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[33] The § 39.5(b) submissions are available on the Commission's Web site at: *http://www.cftc.gov/IndustryOversight/IndustryFilings/index.htm.* Submission materials that a submitting DCO marked for confidential treatment are not available for public review, pursuant to regulations 39.5(b)(5) and 145.9(d).

[34] A DCO is presumed eligible to accept for clearing swaps that are of the group, category, type, or class that the DCO already clears. *See* 17 CFR 39.5(a)(1).

TABLE 1—SUMMARY OF INTEREST RATE SWAP SUBMISSIONS UNDER REGULATION 39.5(b)

Currency	Floating rate index	Maximum stated termination date (years)	CME	Eurex	LCH	SGX
Fixed-to-Floating Interest Rate Swaps						
AUD	BBSW	30	Yes	No	Yes	No
CAD	CDOR	30	Yes	No	Yes	No
CHF	LIBOR	30	Yes	Yes	Yes	No
HKD	HIBOR	10	Yes	No	Yes	No
MXN	TIIE–BANXICO	21	Yes	No	No[35]	No
NOK	NIBOR	10	Yes	No	Yes	No
PLN	WIBOR	10	Yes	No	Yes	No
SGD	SOR–VWAP	10	Yes	No	Yes	Yes
SEK	STIBOR	30	Yes	No	Yes	No
Basis Swap						
AUD	BBSW	30	Yes	No	Yes	No
Overnight Index Swaps						
USD	FedFunds	30	Yes	Yes	Yes	No
EUR	EONIA	30	Yes	Yes	Yes	No
GBP	SONIA	30	Yes	Yes	Yes	No
AUD	AONIA–OIS	5.5	No	No	Yes	No
CAD	CORRA–OIS	2	No	No	Yes	No
Forward Rate Agreements						
AUD	BBSW	3	Yes	No	No	No
NOK	NIBOR	2	Yes	No	Yes	No
PLN	WIBOR	2	Yes	No	Yes	No
SEK	STIBOR	3	Yes	No	Yes	No

The Commission notes that these interest rate swaps are all single currency swaps without optionality, as defined by the applicable DCO.

The submissions from CME, Eurex, LCH, and SGX provided the information required by regulation 39.5(b)(3)(i)–(viii), which, along with other information, has assisted the Commission in making a quantitative and qualitative assessment that these swaps should be subject to a clearing requirement determination.[36] In making this proposed clearing requirement determination, the Commission considered the ability of CME, Eurex, LCH, and SGX to clear a given swap, as well as data supplied cumulatively from each DCO for these swaps. The Commission also reviewed the existing rule frameworks and risk management policies of each DCO.

Additionally, the Commission considered industry data, as available, as well as other publicly available data sources, including information that has been made publicly available pursuant to part 43 of the Commission's regulations (part 43 data).[37] This notice of proposed rulemaking also reflects consultation with the staff of the Securities and Exchange Commission, U.S. prudential regulators, and international regulatory authorities. Finally, as regulation 39.5(b)(5) provides for a 30-day comment period for any clearing requirement determination, the Commission will consider public comment before making any final clearing requirement determination.

B. Proposed Determination Analysis

i. Background Information on Interest Rate Swaps

Interest rate swaps generally are agreements wherein counterparties agree to exchange payments based on a series of cash flows over a specified period of time, typically calculated using two different rates, multiplied by a notional amount. As of June 2015, according to an estimate by the Bank for International Settlements (BIS), there was approximately $435 trillion in outstanding notional of interest rate swaps, which represents approximately 79% of the total outstanding notional of all derivatives.[38]

Section 2(h)(2)(A)(i) of the CEA provides that the Commission shall review each swap, or any group, category, type, or class of swaps to make a determination as to whether the swap or group, category, type, or class of swaps should be required to be cleared. The proposed clearing requirement determination would amend the four classes of interest rate swaps that the

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[35] LCH plans to offer clearing of MXN-denominated fixed-to-floating interest rate swaps in 2016.

[36] In their submissions, CME and LCH stated that they had provided notice of the submissions to members as required by regulation 39.5(b)(3)(viii). SGX stated that its § 39.5(b) submission was published on its Web site. Eurex stated that it will forward its § 39.5(b) submission to its members so that they may comment.

[37] The Commission notes that it also has access to data pursuant to part 45 of the Commission's regulations (part 45 data) that is used in the cost benefit considerations in section V below. For the purposes of this proposal, the Commission decided to use the part 43 data in the determination analysis in section II.B below to enable commenters to review the same data that the Commission reviewed in making the determination. The Commission may in the future rely on aggregated, anonymized part 45 data in making such determinations.

[38] Semi-Annual OTC Derivatives Statistics at End-June 2015, published December 2015 available at: *https://www.bis.org/statistics/derstats.htm.* The BIS data provides the broadest market-wide estimates of interest rate swap activity available to the Commission. The Commission receives swaps market information pursuant to Parts 43 and 45 of the Commission's regulations. *See also* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012); Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (Jan. 9, 2012). However, this data only includes swaps subject to the Commission's jurisdiction, *i.e.*, those swaps subject to the Dodd-Frank Act. The BIS data represents the broader swaps market, some of which is not reportable to the Commission under the Dodd-Frank Act.

Commission defined in the First Clearing Requirement Determination:

1. Fixed-to-floating swaps: Swaps in which the payment or payments owed for one leg of the swap is calculated using a fixed rate and the payment or payments owed for the other leg are calculated using a floating rate.

2. Basis swaps: Swaps for which the payments for both legs are calculated using floating rates.

3. Forward rate agreements: Swaps in which payments are exchanged on a pre-determined date for a single specified period and one leg of the swap is calculated using a fixed rate and the other leg is calculated using a floating rate that is set on a pre-determined date.

4. Overnight Index Swaps: Swaps for which one leg of the swap is calculated using a fixed rate and the other leg is calculated using a floating rate based on a daily overnight rate.

Interest rate swaps within the classes described above are required to be cleared according to the First Clearing Requirement Determination if they meet certain specifications: (i) Currency in which notional and payment amounts of a swap are specified; (ii) floating rate index referenced in the swap; and (iii) stated termination date of the swap. The Commission also included the following three "negative" specifications:[39] (i) no optionality; (ii) no dual currencies; and (iii) no conditional notional amounts.[40] The clearing requirement determination proposed today analyzes the additional interest rate swaps submitted by CME, Eurex, LCH, and SGX according to these classifications and specifications.

ii. Consistency With Core Principles for Derivatives Clearing Organizations

Section 2(h)(2)(D)(i) of the CEA requires the Commission to determine whether a clearing requirement determination would be consistent with the core principles for registered DCOs set forth in section 5b(c)(2) of the CEA and implemented in part 39 of the Commission's regulations.[41] CME, Eurex, LCH, and SGX, each a registered DCO, already clear the swaps identified in the regulation 39.5(b) submissions described above.[42] Accordingly, CME, Eurex, LCH, and SGX already are required to comply with the DCO core principles with respect to the interest rate swaps being considered by the Commission as part of this clearing requirement determination. Moreover, each of these DCOs is subject to the Commission's review and surveillance procedures with respect to these swaps.

For the purposes of reviewing whether the regulation 39.5(b) submissions are consistent with the DCO core principles, the Commission has relied on both the information received in the regulation 39.5(b) submissions and, as discussed above, its ongoing review and risk surveillance programs.

The Commission believes that CME, Eurex, LCH, and SGX would be capable of maintaining compliance with the DCO core principles following a clearing requirement determination for the interest rate swaps that they currently clear. The Commission has not found any evidence to conclude that subjecting any of the interest rates swaps identified herein to a clearing requirement would alter compliance by CME, Eurex, LCH, or SGX with the DCO core principles. Accordingly, the Commission believes that each of the regulation 39.5(b) submissions discussed herein is consistent with section 5b(c)(2) of the CEA.

Request for Comment

The Commission requests comment as to whether the proposed clearing requirement determination would adversely affect CME's, Eurex's, LCH's, or SGX's ability to comply with the DCO core principles.

iii. Consideration of the Five Statutory Factors for Clearing Requirement Determinations

Section 2(h)(2)(D)(ii)(I)–(V) of the CEA identifies five factors that the Commission must "take into account" in making a clearing requirement determination.[43] In regulation 39.5(b), the Commission developed a process for reviewing DCO swap submissions to determine whether such swaps should be subject to a clearing requirement determination. The following is the Commission's consideration of the five factors as they relate to (a) fixed-to-floating interest rate swaps denominated in the nine additional currencies, (b) AUD-denominated basis swaps, (c) AUD-, NOK-, PLN-, and SEK-denominated FRAs, (d) USD-, EUR-, and GBP-denominated OIS with termination dates of up to three years, and (e) AUD- and CAD-denominated OIS, as submitted by CME, Eurex, LCH, and SGX pursuant to regulation 39.5(b).

One particular topic that the Commission considered as it reviewed the five statutory factors for this clearing requirement is the effect a new clearing mandate would have on a DCO's ability to withstand stressed market conditions. The post-financial crisis reforms that have increased the use of central clearing also have increased the importance of ensuring that central counterparties are resilient, particularly in times of stress. The Commission has been working with other domestic and international regulators to make sure that adequate measures are taken to address the potential financial stability risks posed by central counterparties. The Commission is focused on the financial stability of DCOs and is committed to monitoring all potential risks they face, including those related to increased clearing due to a new clearing requirement. Accordingly, how DCOs manage risk during times of market stress, as well as whether DCOs could manage the incremental risk in stressed market conditions that may result from the Commission mandating these products for clearing, are critical factors that the Commission considered in issuing this proposal.

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[39] The negative specifications are product specifications that are explicitly excluded from the clearing requirement. All specifications are listed in regulation 50.4.

[40] The First Clearing Requirement Determination described the term "conditional notional amount" as "notional amounts that can change over the term of a swap based on a condition established by the parties upon execution such that the notional amount of the swap is not a known number or schedule of numbers, but may change based on the occurrence of some future event. This term does not include what are commonly referred to as 'amortizing' or 'roller coaster' notional amounts for which the notional amount changes over the term of the swap based on a schedule of notional amounts known at the time the swap is executed. Furthermore, it would not include a swap containing early termination events or other terms that could result in an early termination of the swap if a DCO clears the swap with those terms." *See* 77 FR at 74302 n. 108.

[41] The core principles address numerous issues, including financial resources, participant and product eligibility, risk management, settlement procedures, default management, system safeguards, reporting, recordkeeping, public information, and legal risk. *See* CEA section 5b(c)(2)(A)–(R); 17 CFR part 39, subparts B and C.

[42] Currently, CME is the only registered DCO clearing MXN-denominated fixed-to-floating interest rate swaps. LCH intends to file a § 39.5(b) submission regarding this swap in 2016. LCH does not anticipate that it will need to make a change to its risk management framework in order to commence clearing MXN-denominated fixed-to-floating interest rate swaps.

[43] The factors are:

(1) The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data;

(2) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded;

(3) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the DCO available to clear the contract;

(4) The effect on competition, including appropriate fees and charges applied to clearing; and

(5) The existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

a. *Factor (I)—Outstanding notional exposures, trading liquidity, and adequate pricing data.*

The first of the five factors requires the Commission to consider "the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data" related to "a submission made [by a DCO]."[44] As explained in the proposal for the First Clearing Determination, there is no single source of data for notional exposures and trading liquidity for individual products within the global interest rate swap market.[45] The Commission has considered multiple sources of data[46] on the interest rate swap market that provide the information the Commission needs to evaluate the first factor, including: (1) Publicly available real time data disseminated by DTCC Data Repository (DDR), a provisionally-registered swap data repository (SDR),[47] pursuant to part 43 data; (2) data from CME, Eurex, LCH, and SGX in their capacities as DCOs; (3) data from the BIS; (4) data from the International Swaps and Derivatives Association (ISDA); and (5) data from the Futures Industry Association (FIA).[48]

The Commission invites market participants to submit data from any available data sources that it has not considered.

1. *Outstanding notional exposures and trading liquidity: Fixed-to-floating interest rate swaps denominated in the nine additional currencies.*

In assessing the extent of outstanding notional exposures and trading liquidity for a particular swap, the Commission reviews various data series to ascertain whether there is an active market for the swap, including whether the swap is traded on a regular basis as reflected by trade count, and whether there is a measurable amount of notional exposures, such that a DCO can adequately risk manage the swap. In particular, the Commission reviewed the aggregate notional exposure and the trade count data from a number of sources for each swap subject to this proposal. While there is no defined standard for an active market, the Commission believes the data indicates that there are sufficient outstanding notional exposures and trading liquidity for fixed-to-floating interest rate swaps denominated in the nine additional currencies to support a clearing requirement determination. The part 43 data presented in Table 2 generally demonstrates that there is significant activity in new fixed-to-floating interest rate swap trades denominated in each of the nine additional currencies. Table 2 presents aggregate notional values and trade counts of fixed-to-floating interest rate swaps denominated in these currencies that were executed during the three-month period from April 1 to June 30, 2015.[49]

The Commission notes the market for any swap is global. Even if the bulk of the activity in a particular swap occurs between counterparties located in a single jurisdiction, Table 2 demonstrates that there is significant participation by U.S. persons in each of the swaps covered by this proposed determination.[50]

TABLE 2—PART 43 DATA FIXED-TO-FLOATING INTEREST RATE SWAPS AGGREGATE NOTIONAL AMOUNTS AND TRADE COUNTS REPORTED SECOND QUARTER 2015[51]

Currency	Notional reported (USD)	Trade count
MXN	403,621,757,132	15,492
CAD	318,497,173,863	4,125
AUD	322,042,446,624	4,898
SEK	82,092,397,444	1,779
PLN	47,267,162,195	1,463
NOK	23,974,272,144	659
SGD	45,618,398,397	995
CHF	48,986,953,725	899
HKD	21,704,787,338	469

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[44] *See* CEA section 2(h)(2)(D)(ii).

[45] *See* 77 FR 47170, 47193 and n. 100, Aug. 7, 2012 (citing Bank of England, "Thoughts on Determining Central Clearing Eligibility of OTC Derivatives," Financial Stability Paper No. 14, March 2012, at 11, available at: *http://www.bankofengland.co.uk/financialstability/Documents/fpc/fspapers/fs_paper14.pdf.*) As discussed above, the Commission receives data regarding swaps subject to its jurisdiction pursuant to parts 43 and 45 of the Commission's regulations. The Commission also receives regular reporting from registered DCOs, as well as its registered entities.

[46] The Commission reviews part 43 data, as well as data from CME, Eurex, LCH, and SGX, on an ongoing basis. Although the part 43 data that is included below in section II.B.iii.a is dated as of the Second Quarter 2015, Commission staff has not observed significant changes in the level of trading activity that would cause the Commission to change its finding that there is regular trading activity in these markets, as well as a measurable amount of data, leading the Commission to believe that there are significant outstanding notional exposures and trading liquidity in the products that are the subject of this proposal. In addition, although the data from DCOs presented below in section II.B.iii.a is dated as of the Second Quarter 2015, Commission staff has not observed significant changes in the notional amounts outstanding or the aggregate notional values of swaps being cleared that would cause the Commission to change its finding that there are significant outstanding notional exposures and trading liquidity in the interest rate swaps that are the subject of this proposal.

[47] CME SDR and Bloomberg SDR, each a registered SDR, collect data regarding interest rate swaps but have not collected data relevant to this proposed determination. ICE Trade Vault, another registered SDR, does not accept interest rate swaps.

[48] In the First Clearing Requirement Determination, the Commission also considered (i) market data published weekly by TriOptima that covered swap trade information submitted voluntarily by 14 large derivatives dealers and (ii) trade-by-trade data provided voluntarily by the 14 dealers to the OTC Derivatives Supervisors Group (ODSG). *See* 77 FR at 74307. The Commission is not using these sources for the determination proposed today because TriOptima no longer collects its data, and the ODSG data was a one-time exercise conducted between June and August 2010.

[49] The data on notional amounts the Commission receives for interest rate swaps pursuant to part 43 is subject to caps, which vary based on currency, reference rate, swap class (*e.g.,* FRA vs. OIS), and maturity of the underlying swap. As a result, the data in Table 2 will underestimate the amount of notional outstanding for the reported trades, as around 25% of the trades contained capped notional amounts. *See* 17 CFR 43.4(h). According to the adopting release accompanying part 43, the Commission caps notional amounts to ensure the anonymity of the parties to a large swap and maintain the confidentiality of business transactions and market positions. *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1213 (Jan. 9, 2012). The rules were amended in May 2013 as they relate to caps. *See* Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 FR 32866, May 13, 2013.

[50] Under the Commission's general policy, neither part 43 reporting nor the clearing requirement apply to a swap where neither counterparty is a U.S. person (although these requirements generally would apply, with the possibility of substituted compliance, to certain swaps involving foreign branches of U.S. SDs or major swap participants (MSPs), or non-U.S. persons that are guaranteed by or affiliate conduits of U.S. persons). *See* Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292, 45369–70 (July 26, 2013).

[51] This table reflects data that was publically disseminated by DDR and reported to it by the reporting counterparty, a SEF, or designated contract market (DCM) pursuant to part 43. As such, the Commission did not independently verify the accuracy of the swap data. The transactions disseminated to the public were rounded pursuant to regulation 43.4(g). As a result, this table may underestimate the amount of notional outstanding for the reported trades. This table does not include cancelled and corrected swaps that counterparties reported under part 43. The Commission converted the notional amounts to USD according to the exchange rates of June 30, 2015. Two other SDRs provisionally registered with the Commission, CME SDR and Bloomberg SDR, also collect information pursuant to part 43. During the second quarter of 2015, neither of those SDRs collected information pertaining to the interest rate swaps that are the subject of this proposed determination.

Table 3.1 demonstrates the notional amounts outstanding of fixed-to-floating interest rate swaps, denominated in each of the nine additional currencies except for MXN, cleared at LCH as of July 17, 2015.[52]

TABLE 3.1—LCH DATA FIXED-TO-FLOATING INTEREST RATE SWAPS NOTIONAL AMOUNTS OUTSTANDING AS OF JULY 17, 2015[53]

Currency	Outstanding notional[54] (USD)
CAD	$3,479,830,407,148
AUD	3,311,898,621,627
CHF	1,110,123,528,868
SEK	942,508,451,280
SGD	735,450,982,935
PLN	500,992,688,256
NOK	402,746,575,455
HKD	385,067,416,327

Table 3.2 describes the aggregate notional values and trade counts of fixed-to-floating interest rate swaps denominated in these currencies that were cleared at LCH during the three-month period from April 1 to June 30, 2015.

TABLE 3.2—LCH DATA FIXED-TO-FLOATING INTEREST RATE SWAPS AGGREGATE NOTIONAL AMOUNTS CLEARED AND TRADE COUNTS[55] SECOND QUARTER 2015

Currency	Aggregate notional[56] (USD)	Trade count
AUD	$747,580,867,222	11,675
CAD	591,935,914,049	8,097
SEK	192,434,187,521	5,827
SGD	188,573,379,738	4,872
CHF	175,203,370,522	3,659
PLN	99,184,390,887	4,249
NOK	72,569,065,080	2,855
HKD	65,655,762,520	1,868

Table 4.1 demonstrates the notional amounts outstanding of fixed-to-floating interest rate swaps, denominated in each of the nine additional currencies, cleared at CME as of July 17, 2015.

TABLE 4.1—CME DATA FIXED-TO-FLOATING INTEREST RATE SWAPS—OPEN INTEREST[57] AS OF JULY 17, 2015[58]

Currency	Open interest (USD)
CAD	$295,213,937,641
MXN	283,989,842,748
AUD	192,208,979,188
SEK	30,834,434,233
NOK	25,396,100,018
CHF	18,322,872,584
PLN	4,157,627,521
HKD	1,937,495,645
SGD	1,014,201,616

Table 4.2 describes the aggregate notional values of fixed-to-floating interest rate swaps denominated in these currencies that were cleared at CME during the three-month period from April 1 to June 30, 2015.

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[52] As mentioned above, LCH intends to commence clearing fixed-to-floating interest rate swaps denominated in MXN in 2016.

[53] Data includes zero coupon swaps, variable notional swaps, and inflation swaps. Data excludes basis swaps, FRAs, and OIS. LCH converted values to USD. All data from LCH cited in this notice of proposed rulemaking is "single-sided" such that notional amounts correspond to the notional amounts of swaps submitted for clearing. LCH publishes outstanding notional amounts of the swaps it has cleared. *See* LCH's Web site, available at: *http://www.swapclear.com/what/clearing-volumes.html.*

[54] As mentioned above, LCH intends to commence clearing fixed-to-floating interest rate swaps denominated in MXN in 2016.

[55] Like the outstanding notional data, this data includes zero coupon swaps, variable notional swaps, and inflation swaps.

[56] The aggregate notional amounts cleared at LCH will appear to be greater than that reflected in the part 43 data because the part 43 data only captures swap data subject to the Dodd-Frank Act, while LCH, a UK entity, clears swaps for participants who may not be subject to the Commission's jurisdiction. The fact that LCH's notional amounts are higher supports this proposed clearing requirement determination because it suggests that there may be extensive liquidity in these swaps outside the U.S., of which DCOs could take advantage in order successfully to risk manage and price these swaps.

[57] CME uses the term "open interest" to refer to notional outstanding. CME converted the values to USD. All data from CME cited in this notice of proposed rulemaking is "single-sided" such that notional amounts correspond to the notional amounts of swaps submitted for clearing.

[58] Data excludes basis swaps, FRAs, and OIS. CME publishes open interest amounts of the swaps it has cleared. *See* CME's Web site, available at: *http://www.cmegroup.com/trading/interest-rates/cleared-otc/#data.*

TABLE 4.2—CME DATA FIXED-TO-FLOATING INTEREST RATE SWAPS AGGREGATE NOTIONAL AMOUNTS CLEARED AND TRADE COUNTS SECOND QUARTER 2015

Currency	Aggregate notional (USD)	Trade count
MXN	$193,941,151,671	7,749
AUD	51,591,005,387	1,194
CAD	91,523,261,511	2,995
SEK	9,712,957,726	998
NOK	5,298,232,932	422
CHF	2,665,840,791	173
PLN	1,097,490,552	577
SGD	355,136,534	32
HKD	211,815,688	16

As of July 17, 2015, the notional amount of SGD-denominated fixed-to-floating interest rate swaps cleared at SGX was $58.5 billion.[59]

As another data source, the Commission looked to BIS data. BIS' most recent triennial central bank survey for interest rate swaps describes the daily average notional values of interest rate swaps, including fixed-to-floating interest rate swaps, on a worldwide basis, denominated in each of the nine additional currencies.

TABLE 5—EXCERPT FROM BIS TRIENNIAL CENTRAL BANK SURVEY 2013[60] OVER-THE-COUNTER SINGLE CURRENCY INTEREST RATE DERIVATIVES TURNOVER

Currency	Daily average notional of swaps (including fixed-to-floating), worldwide (USD)[61]
AUD	$62,854,000,000
CAD	26,794,000,000
SEK	14,618,000,000
MXN	9,285,000,000
CHF	5,335,000,000
SGD	3,349,000,000
NOK	2,560,000,000
PLN	2,138,000,000
HKD	1,992,000,000

More recently, BIS has published statistics showing significant outstanding notional amounts for CAD-, CHF-, and SEK-denominated interest rate swaps: Approximately $10.3 trillion CAD-denominated, approximately $3.2 trillion CHF-denominated, and approximately $2.4 trillion SEK-denominated.[62]

On a daily basis, using data collected from DDR, ISDA's "SwapsInfo" report publishes the notional value and trade counts of fixed-to-floating interest rate swaps denominated in four of the nine additional currencies.[63] For example, Table 6 shows the aggregate notional values and trade counts of such swaps entered into on September 15, 2015.

TABLE 6—EXCERPT FROM ISDA SWAPSINFO INTEREST RATE DERIVATIVES—PRICE/TRANSACTION DATA FIXED-TO-FLOATING INTEREST RATE SWAPS

Currency	Approximate aggregate notional amount executed on September 15, 2015 (USD)[64]	Aggregate trade count executed on September 15, 2015
AUD	$2,143,376,093	51
CAD	1,515,366,916	30

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[59] SGX converted this value from SGD to USD. This figure is "single-sided" such that the notional amount corresponds to the notional amounts of swaps submitted for clearing. SGX publishes outstanding notional amounts on its Web site, available at: *http://www.sgx.com.*

[60] BIS Triennial Central Bank Survey, Interest Rate Derivatives Market Turnover in 2013, Tables 1 and 2.1–2.6 (December 2013), available at: *http://www.bis.org/publ/rpfxf13irt.pdf.*

[61] Data as of April 2013. BIS converted the figures to USD.

[62] Interest rate derivatives by instrument, counterparty, and currency. Notional amounts outstanding, expressed in USD, at end June 2015, available at: *http://stats.bis.org/statx/srs/table/d7?p=20151&c=.* This report does not provide data specific to interest rate swaps denominated in the rest of the nine additional currencies.

[63] SwapsInfo provides data from DDR and Bloomberg SDR "required to be disclosed under U.S. regulatory guidelines." SwapsInfo does not provide information specific to interest rate swaps denominated in the rest of the nine additional currencies. The SwapsInfo referenced in Table 6 only includes information from DDR. *See* SwapsInfo Web site, available at: *http://www.swapsinfo.org/charts/derivatives/price-transaction.*

TABLE 6—EXCERPT FROM ISDA SWAPSINFO INTEREST RATE DERIVATIVES—PRICE/TRANSACTION DATA FIXED-TO-FLOATING INTEREST RATE SWAPS—Continued

Currency	Approximate aggregate notional amount executed on September 15, 2015 (USD) [64]	Aggregate trade count executed on September 15, 2015
MXN	283,339,847	142
PLN	141,249,743	19

The Commission also reviewed data published by the FIA, in its "SEF Tracker" report,[65] consisting of weekly aggregate notional values of interest rate swaps, including FRAs, denominated in various currencies, including five of the nine additional currencies, which have been transacted on 12 swap execution facilities (SEFs) that are now registered with the Commission.[66] Table 7 shows the aggregate notional values of interest rate swaps denominated in AUD, CAD, MXN, PLN, and SEK executed on SEFs during the week of May 25, 2015, as well as such swaps denominated in CHF, HKD, and NOK.[67]

TABLE 7—FIA DATA WEEKLY NOTIONAL VOLUME OF INTEREST RATE SWAPS (INCLUDING FRAS) BY CURRENCY [68]

Currency	Aggregate weekly notional volume executed on SEFs Week of May 25, 2015 (USD) [69]
AUD	$36,194,670,000
MXN	19,526,810,000
CAD	12,527,450,000
CHF	6,686,971,251
SEK	5,958,000,000
PLN	1,420,000,000
NOK	1,403,918,860
HKD	51,589,605

In summary, the data indicates varying levels of activity, measured by outstanding notional amounts and trade counts, in fixed-to-floating interest rate swaps denominated in the nine additional currencies. The Commission also acknowledges that the data comes from various, limited periods of time that do not explicitly include periods of market stress. However, the Commission believes that the data demonstrates sufficient regular trading activity and outstanding notional exposures in the swaps to provide the liquidity necessary for DCOs to successfully risk manage these products and to support a clearing requirement.

Request for Comment

The Commission requests comment regarding whether there are sufficient outstanding notional exposures and trading liquidity in fixed-to-floating interest rate swaps denominated in any or all of the nine additional currencies, during both stressed and non-stressed market conditions, to support a clearing requirement.

2. *Outstanding notional exposures and trading liquidity: AUD-denominated basis swaps.*

The First Clearing Requirement Determination required the clearing of certain USD-, EUR-, GBP-, and JPY-denominated basis swaps. As part of the proposed clearing requirement determination, the Commission is proposing to amend the basis swap class to include AUD-denominated basis swaps.

According to part 43 data, 366 new AUD-denominated basis swaps were executed during the three-month period from April 1 to June 30, 2015. The aggregate notional value of these swaps was $32,559,762,900.[70] Also, during this period, there was no volume of AUD-denominated basis swaps cleared at CME, but the outstanding notional in such swaps cleared at CME as of June 30, 2015 was $69,662,645,400. During the second quarter of 2015, 786 new AUD-denominated basis swaps were cleared at LCH. The aggregate notional value of these swaps was $74,012,261,949. As of July 17, 2015, the outstanding notional value of AUD-denominated basis swaps cleared at CME and LCH was $183,995,548,759 and $443,819,944,145, respectively.[71]

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[64] The Commission converted the values to USD as of Sept. 18, 2015. ISDA SwapsInfo does not provide data for CHF-, HKD-, NOK-, SEK-, or SGD-denominated interest rate swaps.

[65] SEF Tracker is published periodically on FIA's Web site, available at: *https://fia.org/sef-tracker*.

[66] The SEFs include: BGC; Bloomberg; DW; GFI; Javelin; ICAP; IGDL; LatAm; Tradition; trueEx; Tullet Prebon; and TW. The Commission recognizes that under section 2(h)(8) of the CEA and regulations 37.10 and 38.12, the adoption of the clearing requirement proposed herein could result in a trade execution requirement for some or all of the interest rate swaps discussed in this proposal.

[67] The published report does not contain information for CHF-, HKD-, and NOK-denominated interest rate swaps. FIA provided figures for those swaps to the Commission. According to FIA, no SGD-denominated interest rate swaps were transacted on SEFs during the week of May 25, 2015. During the week of July 26, 2015, the aggregate notional amount of SGD-denominated interest rate swaps executed on SEFs was $7,305,402.

[68] May 2015 edition of FIA SEF Tracker, available at: *https://fia.org/articles/fia-releases-sef-tracker-report-may*.

[69] FIA converted the values to USD.

[70] This figure comes from data that was publically disseminated by DDR and reported to it by the reporting counterparty, a SEF, or designated contract market (DCM) pursuant to part 43. As such, the Commission did not independently verify the accuracy of the swap data. The transactions disseminated to the public were rounded pursuant to regulation 43.4(g). As a result, this figure may underestimate the amount of notional outstanding for the reported trades. This figure does not include cancelled and corrected swaps that counterparties reported under part 43. The Commission converted the aggregate notional amount to USD according to the exchange rates of June 30, 2015.

While the data considered above comes from limited periods of time that do not explicitly include periods of market stress, the Commission believes that the data demonstrates sufficient regular trading activity and outstanding notional exposures in AUD-denominated basis swaps to provide the liquidity necessary for DCOs to successfully risk manage these products and to support a clearing requirement.

Request for Comment

The Commission requests comment regarding whether there are sufficient outstanding notional exposures and trading liquidity in AUD-denominated basis swaps, during both stressed and non-stressed market conditions, to support a clearing requirement.

3. *Outstanding notional exposures and trading liquidity: AUD, NOK-, PLN-, and SEK-denominated FRAs.*

The First Clearing Requirement Determination required the clearing of certain USD-, EUR-, GBP-, and JPY-denominated FRAs. As part of the proposed clearing requirement determination, the Commission is proposing to amend the FRA class to include AUD-, NOK-, PLN-, and SEK-denominated FRAs.

Table 8 presents aggregate notional values and trade counts of AUD-, NOK-, PLN-, and SEK-denominated FRAs executed during the second quarter of 2015, collected by DDR.

TABLE 8—PART 43 DATA FRAs AGGREGATE NOTIONAL AMOUNTS AND TRADE COUNT REPORTED SECOND QUARTER 2015[72]

Currency	Aggregate notional reported (USD)	Trade count
AUD	$225,910,666,800	1,058
SEK	183,646,587,508	514
NOK	105,087,098,253	397
PLN	14,455,487,594	103

Table 9.1 presents the notional amounts outstanding of NOK-, PLN-, and SEK-denominated FRAs cleared at LCH as of July 17, 2015.

TABLE 9.1—LCH DATA FRAs NOTIONAL OUTSTANDING AS OF JULY 17, 2015

Currency	Notional reported (USD)
SEK	$706,370,365,302
NOK	544,670,239,925
PLN	274,120,726,256

Table 9.2 presents the aggregate notional values and trade counts of NOK-, PLN-, and SEK-denominated FRAs cleared at LCH during the second quarter of 2015.

TABLE 9.2—LCH DATA FRAs AGGREGATE NOTIONAL AMOUNTS CLEARED AND TRADE COUNT SECOND QUARTER 2015

Currency	Notional reported (USD)	Trade count
SEK	$369,900,226,814	1,600
NOK	348,764,102,890	1,874
PLN	232,246,791,831	1,029

Table 10.1 presents the notional amounts outstanding of AUD-, NOK-, PLN-, and SEK-denominated FRAs cleared at CME as of July 17, 2015.

TABLE 10.1—CME DATA FRAs OPEN INTEREST AS OF JULY 17, 2015

Currency	Notional reported (USD)
SEK	$1,448,168,085
PLN	360,386,524

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[71] CME and LCH converted these figures to USD.

[72] This table reflects data that was publically disseminated by DDR and reported to it by the reporting counterparty, a SEF, or DCM pursuant to part 43. As such, the Commission did not independently verify the accuracy of the swap data. The transactions disseminated to the public were rounded pursuant to regulation 43.4(g). As a result, this table may underestimate the amount of notional outstanding for the reported trades. This table does not include cancelled and corrected swaps that counterparties reported under part 43. The Commission converted the notional amounts to USD according to the exchange rates of June 30, 2015.

TABLE 10.1—CME DATA FRAS OPEN INTEREST AS OF JULY 17, 2015—Continued

Currency	Notional reported (USD)
NOK	122,512,986
AUD	0

Table 10.2 presents the aggregate notional values and trade counts of AUD-, NOK-, PLN-, and SEK-denominated FRAs cleared at CME during the second quarter of 2015.

TABLE 10.2—CME DATA FRAS AGGREGATE NOTIONAL AMOUNTS CLEARED AND TRADE COUNT SECOND QUARTER 2015[73]

Currency	Notional reported (USD)	Trade count
SEK	$1,504,300,488	6
AUD	0	0
NOK	0	0
PLN	0	0

The Commission recognizes that the part 43 data provided in Table 8 comes from a limited period of time that does not explicitly include periods of market stress. The Commission also notes the absence of any clearing activity in AUD-denominated FRAs and the absence of clearing activity at CME in NOK, PLN, and SEK during the second quarter of 2015. However, the Commission believes that the part 43 data provided in Table 8 demonstrates sufficient regular trading activity and outstanding notional exposures in AUD-, NOK-, PLN-, and SEK-denominated FRAs to provide the liquidity necessary for DCOs to successfully risk manage these products and to support a clearing requirement. Moreover, the Australian clearing requirement, which took effect in April 2016, covers AUD-denominated FRAs.[74]

Request for Comment

The Commission requests comment regarding whether there are sufficient outstanding notional exposures and trading liquidity in AUD-, NOK-, PLN, and SEK-denominated FRAs, during both stressed and non-stressed market conditions, to support a clearing requirement.

4. *Outstanding notional exposures and trading liquidity: OIS with termination dates of up to three years.*

The First Clearing Requirement Determination required the clearing of certain USD-, EUR- and GBP-denominated OIS with a stated termination date range of seven days to two years. Interest rate swaps are often multi-year contracts with termination dates out to 50 years or more depending on the class and currency of the swap. As part of the proposed clearing requirement determination, the Commission is proposing to amend the maximum termination date to three years for USD-, EUR- and GBP-denominated OIS that have been required to be cleared pursuant to the First Clearing Requirement Determination. This would make the Commission's OIS clearing requirement consistent with the one that will take effect in the European Union in 2016.[75]

Table 11 presents aggregate notional values and trade counts of USD-, EUR-, and GBP-denominated OIS with terms of two to three years executed during the second quarter of 2015, collected by DDR.

TABLE 11—PART 43 DATA 2–3 YEAR OIS AGGREGATE NOTIONAL AMOUNTS AND TRADE COUNT REPORTED[76] SECOND QUARTER 2015

Currency	Aggregate notional (USD)	Trade count
EUR	$7,582,189,400	47
USD	4,611,000,000	32
GBP	1,377,942,400	15

Tables 12 and 13 present the notional amounts outstanding, the aggregate notional values cleared and trade counts, of USD-, EUR-, and GBP-denominated OIS with terms of two to three years.

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[73] Although there was no clearing activity in NOK- or PLN-denominated FRAs during the second quarter of 2015, CME continues to offer clearing of these products. During the fourth quarter of 2015, CME cleared an aggregate notional amount of $4.1 billion in AUD-denominated FRAs.

[74] *See* section I.B.

[75] *See* discussion of the pending European Union Clearing Obligation in section I.B.

[76] This table reflects data that was publically disseminated by DDR and reported to it by the reporting counterparty, SEF, or DCM pursuant to part 43. As such, the Commission did not independently verify the accuracy of the swaps. The transactions disseminated to the public were rounded pursuant to regulation 43.4(g). As a result, this table may underestimate the amount of notional outstanding for the reported trades. This table does not include cancelled and corrected swaps that counterparties reported under part 43. The Commission converted the notional amounts to USD according to the exchange rates of June 30, 2015.

[77] LCH converted the EUR and GBP values to USD.

TABLE 12—LCH DATA 2–3 YEAR OIS NOTIONAL OUTSTANDING, AGGREGATE NOTIONAL CLEARED, AND TRADE COUNT[77]

Currency	Notional outstanding as of July 17, 2015 (USD)	Aggregate notional cleared second quarter 2015 (USD)	Trade count second quarter 2015
EUR	$456,729,830,424	$369,018,669,593	1,252
GBP	91,417,244,109	64,071,802,837	187
USD	90,058,657,103	46,523,581,500	120

TABLE 13—CME DATA 2–3 YEAR OIS OPEN INTEREST, AGGREGATE NOTIONAL CLEARED, AND TRADE COUNT[78]

Currency	Open interest as of July 17, 2015 (USD)	Aggregate notional cleared second quarter 2015 (USD)	Trade count second quarter 2015
EUR	$53,456,578,566	$6,888,346,279	12
USD	151,923,747,195	9,334,544,737	6
GBP	27,764,067,455	857,520,000	4

As part of the proposed clearing requirement determination, the Commission also is proposing to add AUD- and CAD-denominated OIS to the OIS class included in regulation 50.4(a). This would make the Commission's OIS clearing requirement consistent with the one that is in effect in Australia and that is expected to take effect in Canada in 2017.[79]

Table 14 presents aggregate notional values and trade counts of AUD- and CAD-denominated OIS executed during the second quarter of 2015 collected by DDR.

TABLE 14—PART 43 DATA AUD- AND CAD-OIS AGGREGATE NOTIONAL AMOUNTS AND TRADE COUNT REPORTED[80] SECOND QUARTER 2015

Currency	Aggregate notional (USD)	Trade count
AUD	$307,048,016,016	537
CAD	51,645,589,883	107

Tables 15.1 and 15.2 present the notional amounts outstanding, as well as aggregate notional values cleared and trade counts, of AUD- and CAD-denominated OIS cleared at LCH.

TABLE 15.1—LCH DATA AUD-DENOMINATED OIS NOTIONAL OUTSTANDING, AGGREGATE NOTIONAL CLEARED, AND TRADE COUNT[81]

Currency	Notional outstanding as of January 15, 2016[82] (USD)	Aggregate notional cleared January 4–15, 2016 (USD)	Trade count January 4–15, 2016
AUD	$25,739,497,700	$26,199,691,300	25

TABLE 15.2—LCH DATA CAD-DENOMINATED OIS NOTIONAL OUTSTANDING, AGGREGATE NOTIONAL CLEARED, AND TRADE COUNT[83]

Currency	Notional outstanding as of July 17, 2015 (USD)	Aggregate notional cleared second quarter 2015 (USD)	Trade count second quarter 2015
CAD	$506,221,411,997	$216,524,096,571	260

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[78] CME converted the EUR and GBP values to USD.

[79] *See* discussion of the Australian and proposed Canadian swap clearing requirements in section I.B.

[80] This table reflects data that was publically disseminated by DDR and reported to it by the reporting counterparty, SEF, or DCM pursuant to part 43. As such, the Commission did not independently verify the accuracy of the swaps. The transactions disseminated to the public were rounded pursuant to regulation 43.4(g). As a result, this table may underestimate the amount of notional outstanding for the reported trades. This table does not include cancelled and corrected swaps that counterparties reported under part 43. The Commission converted the notional amounts to USD according to the exchange rates of June 30, 2015.

While the Commission recognizes that the data considered above comes from limited periods of time that do not explicitly include periods of market stress, the Commission believes that the data demonstrates sufficient regular trading activity and outstanding notional exposures in USD-, GBP-, and EUR-denominated OIS with a termination date range of two to three years, as well as AUD- and CAD-denominated OIS, to provide the necessary liquidity for DCOs to successfully risk manage these products and to support a clearing requirement.

Request for Comment

The Commission requests comment regarding whether there are sufficient outstanding notional exposures and trading liquidity in the OIS covered by this proposed determination, during both stressed and non-stressed market conditions, to support a clearing requirement.

5. Pricing data: Fixed-to-floating swaps denominated in the nine additional currencies; AUD-denominated basis swaps; AUD-, NOK-, PLN-, and SEK-denominated FRAs; USD-, GBP, and EUR-OIS with termination dates of up to three years; and AUD- and CAD-OIS.

The Commission regularly reviews pricing data on the interest rate swaps that are the subject of this proposal and has determined that these swaps are capable of being priced off of deep and liquid markets. Commission staff receives and reviews margin model information from CME, Eurex, LCH, and SGX that addresses how such DCOs would follow particular procedures to ensure that market liquidity exists in order to exit a position in a stressed market, including the products subject to this proposal. In particular, Commission staff analyzes the level of liquidity in the specific product markets and assesses the time required to determine a price. Based on this information, the Commission staff has no reason to believe that there is, or will be, difficulty pricing the products subject to this proposal in a stressed environment.

Because of the stability of access to pricing data from these markets, the pricing data for non-exotic interest rate swaps that are currently being cleared is generally viewed as reliable. Therefore, the Commission believes that there is adequate pricing data to support a proposed clearing requirement determination.

In addition, CME, Eurex, LCH, and SGX provided information that supports the Commission's conclusion that there is adequate pricing data to warrant a clearing requirement determination in the products subject to this proposal. LCH and CME believe there is adequate pricing data for risk and default management. CME publicly represents that its interest rate swap valuations are fully transparent and rely on pricing inputs obtained from wire service feeds. In its § 39.5(b) submission, SGX asserted that the valuation rate sources it uses, and the manner in which it determines mark-to-market prices, are in alignment with industry practices. CME, Eurex, LCH, and SGX obtain daily prices from third-party data providers, clearing members, and/or major banks.

As discussed above, the Commission reviews margin models and related pricing data submitted by CME, Eurex, LCH, and SGX. One source of information that they use to determine adequate pricing data is a regular survey of swap traders that asks the traders to estimate what it would cost to liquidate positions of different sizes in different currencies. The information obtained during these market participant surveys is incorporated into to each of CME, Eurex, LCH, and SGX's internal margin models so that each is confident that it will be able to withstand stressed market conditions. Establishing accurate pricing data is one component of each of CME, Eurex, LCH, and SGX's ability to risk manage their interest rate swaps offered for clearing. The Commission believes that the methods used by these DCOs provide information on pricing that is accurate and demonstrates the ability to price the products subject to this proposal successfully, now and if they are subject to a clearing requirement.

Request for Comment

The Commission requests comment regarding whether there is adequate pricing data for DCO risk and default management of the products subject to this proposal.

Based on the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data, the Commission proposes to require that interest rate swaps with the specifications shown in Table 16 be cleared.[84]

TABLE 16—SPECIFICATIONS FOR INTEREST RATE SWAPS TO BE CLEARED IN § 50.4(a)

Specification	Fixed-to-floating swap class					
1. Currency	Australian Dollar (AUD).	Canadian Dollar (CAD).	Euro (EUR)	Hong Kong Dollar (HKD).	Mexican Peso (MXN).	Norwegian Krone (NOK).
2. Floating Rate Indexes	BBSW	CDOR	EURIBOR	HIBOR	TIIE	NIBOR.
3. Stated Termination Date Range.	28 days to 30 years.	28 days to 30 years.	28 days to 50 years.	28 days to 10 years.	28 days to 21 years.	28 days to 10 years.
4. Optionality	No	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No	No	No.

Specification	Fixed-to-floating swap class					
1. Currency	Polish Zloty (PLN).	Singapore Dollar (SGD).	Swedish Krona (SEK).	Swiss Franc (CHF).	Sterling (GBP).	U.S. Dollar (USD).	Yen (JPY).
2. Floating Rate Indexes	WIBOR	SOR-VWAP	STIBOR	LIBOR	LIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range.	28 days to 10 years.	28 days to 10 years.	28 days to 15 years.	28 days to 30 years.	28 days to 50 years.	28 days to 50 years.	28 days to 30 years.
4. Optionality	No	No	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No	No	No.

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[81] LCH converted the AUD values to USD.

[82] LCH began clearing AUD-denominated OIS on January 4, 2016.

[83] LCH converted the CAD values to USD.

[84] This information also appears in revised regulation 50.4(a). *See* section III.

Specification							
6. Conditional Notional Amounts.	No	No	No	No	No	No	No.

Specification	Basis swap class				
1. Currency	Australian Dollar (AUD).	Euro (EUR)	Sterling (GBP)	U.S. Dollar (USD)	Yen (JPY).
2. Floating Rate Indexes	BBSW	EURIBOR	LIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range	28 days to 30 years.	28 days to 50 years.	28 days to 50 years.	28 days to 50 years.	28 days to 30 years.
4. Optionality	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No	No.

Specification	Forward rate agreement class			
1. Currency	Australian Dollar (AUD).	Euro (EUR)	Polish Zloty (PLN)	Norwegian Krone (NOK).
2. Floating Rate Indexes	BBSW	EURIBOR	WIBOR	NIBOR.
3. Stated Termination Date Range	3 days to 3 years	3 days to 3 years	3 days to 2 years	3 days to 2 years.
4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No.

Specification	Forward rate agreement class			
1. Currency	Swedish Krona (SEK)	Sterling (GBP)	U.S. Dollar (USD)	Yen (JPY).
2. Floating Rate Indexes	STIBOR	LIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range	3 days to 3 years	3 days to 3 years	3 days to 3 years	3 days to 3 years.
4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No.

Specification	Overnight index swap class				
1. Currency	Australian Dollar (AUD).	Canadian Dollar (CAD).	Euro (EUR)	Sterling (GBP)	U.S. Dollar (USD).
2. Floating Rate Indexes	AONIA–OIS	CORRA–OIS	EONIA	SONIA	FedFunds.
3. Stated Termination Date Range	7 days to 2 years	7 days to 2 years	7 days to 3 years	7 days to 3 years	7 days to 3 years.
4. Optionality	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No	No.

Request for Comment

The Commission requests comment as to whether it should consider other data to determine whether outstanding notional exposures, trading liquidity, or adequate pricing data are sufficient to support this proposed clearing requirement. If so, please provide or identify any additional data that may assist the Commission in this regard.

The Commission also requests comment as to whether fixed-to-floating interest rate swaps denominated in certain of the nine additional currencies are more or less suitable for a clearing requirement in terms of outstanding notional values, trading liquidity, or pricing data. In addition, the Commission requests comment regarding whether other evidence or criteria should inform the Commission's assessment that the swaps covered by this proposal are suitable for clearing.

Finally, the Commission requests comment about the types of swap counterparties that would be affected by the proposed determination. For example, as noted above, under the Commission's general policy the clearing requirement would not apply to swaps involving non-U.S. counterparties in certain situations.[85] The Commission also notes that the exception and exemptions that currently apply to the existing swap clearing requirement would also apply to the proposed clearing requirement.[86]

b. *Factor (II)—Availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure.*

Section 2(h)(2)(D)(ii)(II) of the CEA requires the Commission to take into account the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the proposed classes of swaps on terms that are consistent with the material terms and trading conventions on which they are now traded. The Commission believes that CME, Eurex, LCH, and SGX have developed rule frameworks, capacity, operational expertise and resources, and credit support infrastructure to clear the interest rate swaps they currently clear, including those products subject to this proposal, on terms that are consistent with the material terms and trading conventions on which those swaps are being traded.

The Commission subjects CME, Eurex, LCH, and SGX to ongoing review and risk surveillance programs to ensure compliance with the core principles for the submitted swaps.[87] As discussed above, as part of a registered DCO's initial registration review and periodic in-depth reviews thereafter, the Commission reviews the DCO's rule framework, capacity, and operational expertise and resources to clear the submitted swaps. The Commission may request that the DCO or DCO applicant change its rules to comply with the CEA and Commission regulations.

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[85] *See* section II.B.iii.a.1. Under the Commission's general policy, the clearing requirement does not apply to a swap where neither counterparty is a U.S. person (although these requirements generally would apply, with the possibility of substituted compliance, to certain swaps involving foreign branches of U.S. swap dealers or major swap participants, or non-U.S. persons that are guaranteed by or affiliate conduits of U.S. persons). *See* Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292, 45369–70 (July 26, 2013).

[86] The exception and exemptions to the clearing requirement are codified in subpart C to part 50 of the Commission's regulations.

After registration, the Commission conducts examinations of DCOs to determine whether the DCO is in compliance with the CEA and Commission regulations. Moreover, Commission risk surveillance staff monitors the risks posed to and by the DCO, in ways that include regularly conducting back testing to review margin coverage at the product level and following up with the DCO and its clearing members regarding any exceptional results.

CME, Eurex, LCH, and SGX have procedures pursuant to which they regularly review their clearing of the interest rate swaps subject to this proposal in order to confirm, or make adjustments to, margins and other risk management tools. When reviewing CME, Eurex, LCH, and SGX's risk management tools, the Commission considers whether the DCO is able to manage risk during stressed market conditions to be one of the most significant considerations.

CME, Eurex, LCH, and SGX have developed detailed risk-management practices, including a description of the risk factors considered when establishing margin levels such as historical volatility, intraday volatility, seasonal volatility, liquidity, open interest, market concentration, and potential moves to default, among other risks.[88] The Commission reviews and oversees CME's, Eurex's, LCH's, and SGX's risk management practices and development of margin models. Margin models are further refined by stress testing and daily back testing. When assessing whether CME, Eurex, LCH, and SGX can clear swaps safely during stressed market conditions, stress testing and back testing are key tools the Commission considers as well.

CME, Eurex, LCH, and SGX design stress tests to simulate "extreme but plausible" market conditions based on historical analysis of product movements and/or based on hypothetical forward-looking scenarios that are created with the assistance of market experts and participants. Commission staff monitors and oversees the use and development of these stress tests. CME, Eurex, LCH, and SGX conduct stress tests daily. In addition, CME, Eurex, LCH, and SGX conduct reverse stress testing to ensure that their default funds are sized appropriately. Reverse stress testing uses plausible market movements that could deplete guaranty funds and cause large losses for top clearing members.[89] These four DCOs analyze the results of stress tests and reverse stress tests to determine if any changes to their financial resources or margin models are necessary. Commission risk surveillance staff also monitors markets in real-time and also performs stress tests against the DCOs' margin models as an additional level of oversight, and may recommend changes to a margin model.

CME, Eurex, LCH, and SGX conduct back testing on a daily basis to ensure that the margin models capture market movements for member portfolios. Back testing serves two purposes: it tests margin models to determine whether they are performing as intended and it checks whether the margin models produce margin coverage levels that meet the DCO's established standards. CME conducts daily back testing for each major asset class, and SGX performs daily back testing on a contract level to examine margin models in more detail. LCH may call additional margin from clearing members if back testing demonstrates margin erosion. The back testing process helps CME, Eurex, LCH, and SGX determine whether their clearing members satisfy the required margin coverage levels and liquidation time frame.

Before offering a new product for clearing, such as the interest rate swaps subject to this proposal, CME, Eurex, LCH, and SGX take stress tests and back testing results into account to determine whether the clearinghouse has sufficient financial resources to offer new clearing services. In addition, the Commission reviews margin models and default resources to ensure that the DCOs can risk manage their portfolio of products offered for clearing. The Commission believes that this combination of stress testing and back testing in anticipation of offering new products for clearing provides CME, Eurex, LCH, and SGX with greater certainty that new product offerings will be risk-managed appropriately. The process of stress testing and back testing also gives the DCOs practice incorporating the new product into their models.

In addition to the Commission's surveillance and oversight, CME, Eurex, LCH, and SGX continue to monitor and test their margin models over time so that they can operate effectively in stressed and non-stressed market environments. CME, Eurex, LCH, and SGX review and validate their margin models regularly and in the case of CME and SGX, no less than annually. CME and LCH use the following additional measures to risk manage their margin coverage levels for interest rate swaps denominated in various currencies, including: Regularly surveying traders to estimate what it would cost to liquidate positions of different sizes in different currencies and then incorporating those costs into the amount of initial margin that a clearing member is required to post, and tailoring their margin models to account for several attributes specific to various currencies.

Finally, aside from margin coverage requirements, CME, Eurex, LCH, and SGX can monitor and manage credit risk exposure by asset class, clearing member, account, or even by individual customers. They manage credit risk by establishing position and concentration limits based on product type or counterparty. The Commission recognizes that these limits reduce potential market risks so that DCOs are better able to withstand stressed market conditions. CME, Eurex, LCH, and SGX monitor exposure concentrations and may require additional margin deposits for clearing members with weak credit scores, with large or concentrated positions, with positions that are illiquid or exhibit correlation with the member itself, and/or where the member has particularly large exposures under stress scenarios. The ability to call for any additional margin, on top of collecting initial and variation margin, to meet the current DCO exposure is another tool that CME, Eurex, LCH, and SGX may use to protect against stressed market conditions.

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[87] Section 5c(c) of the CEA governs the procedures for review and approval of new products, new rules, and rule amendments submitted to the Commission by DCOs. Parts 39 and 40 of the Commission's regulations implement section 5c(c) by: (i) Establishing specific requirements for compliance with the core principles as well as procedures for registration, implementing DCO rules, and clearing new products; and (ii) establishing provisions for a DCO's submission of rule amendments and new products to the Commission.

[88] Each of CME, Eurex, LCH, and SGX has published a document outlining its compliance with the Principles for Financial Market Infrastructures ("PFMIs") published by the Committee on Payments and Market Infrastructures ("CPMI" formerly CPSS) and the International Organization of Securities Commissions ("IOSCO"). *See* CME Clearing: Principles for Financial Market Infrastructures Disclosure, available at: *http://www.cmegroup.com/clearing/risk-management/files/cme-clearing-principles-for-financial-market-infrastructures-disclosure.pdf. See* Assessment of Eurex Clearing AG's compliance against the CPSS–IOSCO Principles for financial market infrastructures (PFMI) and disclosure framework associated to the PFMIs, available at: *http://www.eurexclearing.com/blob/148684/58e6fe89e3f54ebe169e530ac2235b43/data/cpss-iosco-pfmi_assessment_2014_en.pdf. See* LCH's CPMI–IOSCO Self Assessment 2014, available at: *http://www.lchclearnet.com/documents/731485/762558/CPMI_IOSCO_Assessment_of_LCH+ClearnetLtd+2014.pdf/45876bd6-3818-4b76-a463-2952a613c326. See* SGX PFMI Disclosure Documents, available at: *http://www.sgx.com/wps/portal/sgxweb/home/clearing/derivatives/pfmi_disclosure.*

[89] For example, CME, Eurex, LCH, and SGX may use scenarios for stress testing and reverse stress testing that capture, among other things, historical price volatilities, shifts in price determinants and yield curves, multiple defaults over various time horizons, and simultaneous pressures in funding and asset markets.

In support of its ability to clear the products subject to this proposal, CME's § 39.5(b) submission cites to its rulebook to demonstrate the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear interest rate swap contracts on terms that are consistent with the material terms and trading conventions on which the contracts are then traded. LCH's submissions state that LCH has the capability and expertise not only to manage the risks inherent in the current book of interest rate swaps cleared, but also to manage the increased volume that a clearing requirement for additional currently clearable products could generate. SGX's submission states that SGD-denominated fixed-to-floating interest rate swaps are cleared under an established rule framework and operational infrastructure that has been accepted by SGX's clearing members. SGX asserted further that it has the appropriate risk management, operations, and technology capabilities in place to ensure that it is able to liquidate positions in these swaps in an orderly manner should a default occur. Similarly, Eurex's submission states that it clears interest rate swaps pursuant to its well-developed rule framework and support infrastructure.

Importantly, the Commission notes that CME, Eurex, LCH, and SGX each developed their interest rate swap clearing offerings in conjunction with market participants and in response to the specific needs of the marketplace. In this manner, CME's, Eurex's, LCH's, and SGX's clearing services are designed to be consistent with the material terms and trading conventions of a bilateral, uncleared market.

When assessing whether CME, Eurex, LCH, and SGX can clear the swaps subject to this proposed clearing requirement determination safely during times of market stress, the Commission reviewed the public disclosures published by CME, Eurex, LCH, and SGX. In addition, the Commission reviewed the risk management practices used by these DCOs, and the Commission has determined that the application of such practices to the products subject to this proposed clearing requirement determination should ensure that the products can be cleared safely during times of market stress.

Therefore, the Commission is proposing this clearing requirement determination.

Request for Comment

The Commission requests comments concerning all aspects of this factor, including whether commenters agree that CME, Eurex, LCH, and SGX can satisfy the factor's requirements. In particular, the Commission seeks comment regarding whether CME, Eurex, LCH, and SGX have the ability to clear the swaps subject to this proposed clearing requirement during times of market stress.

c. *Factor (III)—Effect on the mitigation of systemic risk.*

Section 2(h)(2)(D)(ii)(III) of the CEA requires the Commission to take into account the effect of the clearing requirement on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the DCO available to clear the contract. The Commission believes that the market for the swaps covered by this proposed determination is significant and that mitigating counterparty risk through clearing likely would reduce systemic risk in that market generally. Data collected by SDRs demonstrates that Commission-registered SDs are counterparties to an overwhelming majority of swaps reported to the Commission. Because only SDs with a significant volume of swaps activity are required to register with the Commission,[90] by expanding the swap clearing requirement, a greater percentage of an SD's swap activity will be centrally cleared and risk managed. For example, central clearing reduces the interconnectedness of the swap positions of SDs, and other swap market participants, because the DCO, an independent third party that takes no market risk, guarantees the collateralization of swap counterparties' exposures. Mitigating counterparty credit risk for SDs with systemically important swap positions through clearing likely would reduce systemic risk in the swap market and the financial system as a whole.[91]

In addition to managing counterparty credit risk, centrally clearing the swaps covered by this proposal through a DCO will reduce systemic risk through the following means: Providing counterparties with daily mark-to-market valuations and exchange of variation margin pursuant to a risk management framework; requiring posting of initial margin to cover potential future exposures in the event of a default; offering multilateral netting to substantially reduce the number and notional amount of outstanding bilateral positions; reducing swap counterparties' operational burden by consolidating collateral management and cash flows; eliminating the need for novations or tear-ups because clearing members may offset opposing positions; and increasing transparency.

The Commission recognizes that the recently issued margin requirements for uncleared swaps for SDs and MSPs will require some market participants to post and collect margin for those swaps not subject to the Commission's clearing requirement.[92] This margin requirement was not finalized at the time the Commission issued the First Clearing Requirement Determination. As a result, the Commission considered the clearing requirement in light of existing market practice. Going forward, the requirement to margin uncleared swaps in certain instances will mitigate the accumulation of risk between counterparties in a manner similar to that of central clearing. However, the Commission believes that central clearing, including required clearing such as that proposed herein, offers greater risk mitigation than bilateral margining for swaps that are sufficiently standardized and meet the Commission's other requirements for suitability. First, absent any applicable exception or exemption,[93] this clearing requirement would apply to all transactions in the swaps covered by this proposal, whereas the uncleared margin requirements apply only to swaps executed by SDs, MSPs, and certain "financial end-users."[94] Second, this clearing requirement would require all swap counterparties to post initial margin with a DCO, whereas under the uncleared swap margin requirements, for certain swaps, specifically those between an SD or MSP and a financial end-user, initial margin is required to be posted and collected only if the financial end-user (together with its affiliates) has over $8 billion in gross notional exposures for uncleared swaps.[95] Third, swaps transacted through a DCO are secured by the DCO's guaranty fund and other available financial resources, which are intended to cover extraordinary losses that would not be covered by initial margin ("tail risk"), whereas swaps subject to the uncleared margin requirements are not secured by a guaranty fund or other financial resources available to the DCO but covered by unencumbered assets of the counterparty.

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[90] *See* definition of SD, codified in Commission regulation 1.3(ggg).

[91] In its § 39.5(b) submission, SGX asserts that central clearing reduces counterparty credit risk because the central counterparty interposes itself between the initial buyer and seller and because clearing creates efficiencies through the consolidation of collateral management.

[92] Margin Requirements for Uncleared Swaps for SDs and MSPs (final rule), 81 FR 636 (Jan. 6, 2016) (codified in subpart E of part 23 of the Commission's regulations).

[93] The exception and exemptions to the clearing requirement are codified in subpart C to part 50 of the Commission's regulations.

[94] Regulations 23.152 and 23.153.

In their § 39.5(b) submissions, CME, Eurex, and LCH submit that subjecting interest rate swaps to central clearing helps mitigate systemic risk. According to LCH, if all clearable swaps are required to be cleared, then from a systemic risk perspective there will be a less disparate marketplace. CME believes that the 2008 financial crisis demonstrated the potential for systemic risk arising from the interconnectedness of over-the-counter (OTC) derivatives market participants and believes that centralized clearing will reduce systemic risk.

While a clearing requirement removes a large portion of the interconnectedness of current OTC markets that leads to systemic risk, the Commission notes that central clearing, by its very nature, concentrates risk in a handful of entities. Similarly, SGX noted that the risk reducing and other benefits of central clearing must be weighed against the concentration of risk in a few clearinghouses. However, the Commission observes that central clearing was developed and designed to handle such concentration of risk. Moreover, as discussed at length above, the Commission's review and risk surveillance programs monitor and attempt to mitigate potential risks that can arise in derivatives clearing activities for the DCO, its members, and other entities using the DCO's services.

Part of a DCO's risk management framework includes procedures for responding in stressed circumstances, such as a clearing member's default on its obligations. As discussed below, each of CME, Eurex, LCH, and SGX has a procedure for closing out and/or transferring a defaulting clearing member's positions and collateral.[96] Transferring customer positions to solvent clearing members in the event of a default is critical to reducing systemic risk. DCOs are designed to withstand defaulting positions and to prevent a defaulting clearing member's loss from spreading further and triggering additional defaults. If the introduction of this clearing requirement for interest rate swaps increases the number of clearing members and market participants in the swap market, then DCOs may find it easier to transfer positions from defaulting clearing members if there is a larger pool of potential clearing members to receive the positions. If this were to occur, then the Commission's interest rate swap clearing requirement proposal would reduce systemic risk by increasing the number of clearing members and market participants in these swaps, which is expected to provide DCOs with additional recipients for defaulting clearing members' positions in the event of a default.

Each DCO has experience risk managing interest rate swaps, and the Commission has determined that each of CME, Eurex, LCH, and SGX has the necessary resources available to clear the swaps that are the subject of its submission.

Accordingly, the Commission believes that CME, Eurex, LCH, and SGX would be able to manage the risk posed by clearing the additional swaps that would be required to be cleared by virtue of this expanded clearing requirement. In addition, the Commission believes that the central clearing of the interest rate swaps that are the subject of this proposal would serve to mitigate counterparty credit risk, and might increase the number of clearing members and market participants in these swaps, thereby potentially reducing systemic risk. Having taken into account the likely effect on the mitigation of systemic risk, the Commission is proposing this clearing requirement.

Request for Comment

The Commission requests comments concerning the proposed clearing requirement's effect on reducing systemic risk. Would the proposed clearing requirement increase the risk to CME, Eurex, LCH, SGX, or any other entity? If so, please explain why. The Commission also requests comment on whether CME, Eurex, LCH, and SGX are each capable of handling any increased risk that would result from the proposed clearing requirement, including in stressed market conditions.

d. *Factor (IV)—Effect on competition.*

Section 2(h)(2)(D)(ii)(IV) of the CEA requires the Commission to take into account the effect on competition, including appropriate fees and charges applied to clearing. As discussed above, of particular concern to the Commission is whether this proposed determination would harm competition by creating, enhancing, or entrenching market power in an affected product or service market, or facilitating the exercise of market power. Market power is viewed as the ability to raise price, including clearing fees and charges, reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives.

The Commission has identified one putative service market as potentially affected by this proposed clearing determination: A DCO service market encompassing those clearinghouses that currently clear the interest rate swaps subject to this proposal, *i.e.*, CME, Eurex, LCH, and SGX. Without defining the precise contours of this market at this time, the Commission recognizes that, depending on the interplay of several factors, this proposed clearing requirement potentially could impact competition within the affected market. Of particular importance to whether any impact is, overall, positive or negative, is: (1) Whether the demand for these clearing services and swaps is sufficiently elastic that a small but significant increase above competitive levels would prove unprofitable because users of the interest rate swap products and DCO clearing services would substitute other clearing services co-existing in the same market(s); and (2) the potential for new entry into this market. The availability of substitute clearing services to compete with those encompassed by this proposed determination, and the likelihood of timely, sufficient new entry in the event prices do increase above competitive levels, each operate independently to constrain anticompetitive behavior.

Any competitive import likely would stem from the fact that the proposed determination would remove the alternative of not clearing for interest rate swaps subject to this proposal. The proposed determination would not specify who may or may not compete to provide clearing services for the interest rate swaps subject to this proposal (as well as those not required to be cleared).

Removing the uncleared option through this proposed rulemaking is not determinative of negative competitive impact. Other factors—including the availability of other substitutes within

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Factor (V)—Legal certainty in the event of insolvency. *See* section II.B.iii.e.

[95] Regulation 23.152.

[96] For further discussion of treatment of customer and swap counterparty positions, funds and property in the event of a the insolvency of a DCO or one or more of its clearing members, please see

the market or potential for new entry into the market—may constrain market power. The Commission does not foresee that the proposed determination constructs barriers that would deter or impede new entry into a clearing services market.[97] Indeed, there is some basis to expect that the determination could foster an environment conducive to new entry. For example, the proposed clearing determinations, and the prospect that more may follow, is likely to reinforce, if not encourage, growth in demand for clearing services. Demand growth, in turn, can enhance the sales opportunity, a condition hospitable to new entry.[98]

Request for Comment

The Commission requests comment on the extent to which: (1) Entry barriers currently do or do not exist with respect to a clearing services market for the interest rate swaps subject to this proposal; (2) the proposed determinations may lessen or increase these barriers; and (3) the proposed determinations otherwise may encourage, discourage, facilitate, and/or dampen new entry into the market. In addition to what is noted above, the Commission requests comment, and quantifiable data, on whether the required clearing of any or all of these swaps will create conditions that create, increase, or facilitate an exercise of: (1) Clearing services market power in CME, Eurex, LCH, SGX, and/or any other clearing service market participant, including conditions that would dampen competition for clearing services and/or increase the cost of clearing services; and/or (2) market power in any product markets for interest rate swaps, including conditions that would dampen competition for these product markets and/or increase the cost of interest rate swaps identified in this proposal. The Commission seeks comment, and quantifiable data, on the likely cost increases associated with clearing, particularly those fees and charges imposed by DCOs, and the effects of such increases on counterparties currently participating in the market. The Commission also seeks comment regarding the effect of competition on DCO risk management. The Commission also welcomes comment on any other aspect of this factor.

e. *Factor (V)—Legal certainty in the event of insolvency.*

Section 2(h)(2)(D)(ii)(V) of the CEA requires the Commission to take into account the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property. The Commission is proposing this clearing requirement based on its view that there is reasonable legal certainty with regard to the treatment of customer and swap counterparty positions, funds, and property in connection with cleared swaps, namely the fixed-to-floating interest rate swaps, basis swap, OIS, and FRAs subject to this proposal, in the event of the insolvency of the relevant DCO (CME, LCH, or SGX) or one or more of the DCO's clearing members.[99]

The Commission concludes that, in the case of a clearing member insolvency at CME, where the clearing member is the subject of a proceeding under the U.S. Bankruptcy Code, subchapter IV of Chapter 7 of the U.S. Bankruptcy Code (11 U.S.C. 761–767) and parts 22 and 190 of the Commission's regulations would govern the treatment of customer positions.[100] Pursuant to section 4d(f) of the CEA, a clearing member accepting funds from a customer to margin a cleared swap must be a registered FCM. Pursuant to 11 U.S.C. 761–767 and part 190 of the Commission's regulations, the customer's interest rate swap positions, carried by the insolvent FCM, would be deemed "commodity contracts."[101] As a result, neither a clearing member's bankruptcy nor any order of a bankruptcy court could prevent CME from closing out/liquidating such positions. However, customers of clearing members would have priority over all other claimants with respect to customer funds that had been held by the defaulting clearing member to margin swaps, such as the interest rate swaps subject to this proposal.[102] Thus, customer claims would have priority over proprietary claims and general creditor claims. Customer funds would be distributed to swap customers, including interest rate swap customers, in accordance with Commission regulations and section 766(h) of the Bankruptcy Code. Moreover, the Bankruptcy Code and the Commission's rules thereunder (in particular 11 U.S.C. 764(b) and 17 CFR 190.06) permit the transfer of customer positions and collateral to solvent clearing members.

Similarly, 11 U.S.C. 761–767 and part 190 would govern the bankruptcy of a DCO where the DCO is the subject of a proceeding under the U.S. Bankruptcy Code, in conjunction with DCO rules providing for the termination of outstanding contracts and/or return of remaining clearing member and customer property to clearing members.

With regard to LCH, the Commission understands that the default of a clearing member of LCH would be governed by the rules of that DCO. LCH, a DCO based in the United Kingdom, has represented that pursuant to European Union law, LCH's rules would supersede English insolvency laws.[103] Under its rules, LCH would be permitted to close out and/or transfer positions of a defaulting clearing member that is an FCM pursuant to the U.S. Bankruptcy Code and part 190 of the Commission's regulations. According to LCH's submission, the insolvency of LCH itself would be governed by English insolvency law, which protects the enforceability of the default-related provisions of LCH's rulebook, including in respect of compliance with applicable provisions of the U.S. Bankruptcy Code and part 190 of the Commission's regulations. LCH has obtained, and shared with the Commission, legal opinions that support the existence of such legal certainty in relation to the protection of customer and swap counterparty positions, funds, and property in the event of the insolvency of one or more of its clearing members.[104]

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[97] That said, the Commission recognizes that (1) to the extent the clearing services market for the interest rate swaps identified in this proposal, after foreclosing uncleared swaps, would be limited to a concentrated few participants with highly aligned incentives, and (2) the clearing services market is insulated from new competitive entry through barriers—*e.g.*, high sunk capital cost requirements; high switching costs to transition from embedded incumbents; and access restrictions—the proposed determination could have a negative competitive impact by increasing market concentration.

[98] *See, e.g.*, U.S. Dep't. of Justice & Fed. Trade Comm'n., Horizontal Merger Guidelines (2010) section 9.2 (entry likely if it would be profitable which is in part a function of "the output level the entrant is likely to obtain"). In addition, the Commission notes that there are clearing organizations that clear the products subject to the determination proposed today that are not Commission-registered DCOs: (1) OTC Clearing Hong Kong Ltd., which the Commission has exempted from DCO registration and clears HKD-denominated interest rate swaps; (2) ASX Clear (Futures) Pty Ltd. (Australia), which the Commission has also exempted from DCO registration and clears AUD-denominated interest rate swaps; and (3) Asigna (Mexico), which clears MXN-denominated interest rate swaps.

[99] The Commission is not discussing Eurex in terms of this factor because Eurex's DCO registration order does not currently permit Eurex to clear for customers. *See* Eurex DCO registration order, available at: *http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/orgdcoeurexclrorder212016.pdf.*

[100] The Commission observes that a FCM or DCO also may be subject to resolution under Title II of the Dodd-Frank Act to the extent it would qualify as covered financial company (as defined in section 201(a)(8) of the Dodd-Frank Act). Under Title II, different rules would apply to the resolution of an FCM or DCO. Discussion in this section relating to what might occur in the event an FCM or DCO defaults or becomes insolvent describes procedures and powers that exist in the absence of a Title II receivership.

[101] If an FCM is also registered as a broker-dealer, certain issues related to its insolvency proceeding would also be governed by the Securities Investor Protection Act.

[102] Claims seeking payment for the administration of customer property would share this priority.

[103] The U.K. is bound by European Union legislation, including the Settlement Finality Directive (Council Directive 98/26/EC). The U.K.'s implementing legislation (The Financial Markets and Insolvency (Settlement Finality) Regulations 1999) acts to disapply, in certain instances, national U.K. insolvency law in favor of the rules of a designated system, and LCH has been so designated.

With regard to SGX, the Commission understands that the default of an SGX clearing member, or SGX itself, would be governed by Singapore law, except for certain SGX rules relating to cleared swaps customer collateral, as part 22 of the Commission's regulations defines that term, which are governed by U.S. law. Like LCH, SGX has obtained, and shared with the Commission, a legal opinion that support the existence of such legal certainty.[105]

Request for Comment

The Commission requests comment as to whether there is reasonable legal certainty, in the event of an insolvency of CME, LCH, SGX, or one or more of any of these DCO's clearing members, with regard to the treatment of customer and swap counterparty positions, funds, and property. Specifically, the Commission requests comment on whether U.S. swap counterparties have concerns about the applicability of English or Singapore law to U.S. persons clearing swaps at LCH or SGX.

III. Proposed Amended Regulation 50.4(a)

The Commission promulgated regulation 50.4 as part of the First Clearing Requirement Determination.[106] Regulation 50.4 sets forth the basic specifications of the classes of swaps that the Commission has required to be cleared in order to allow counterparties contemplating entering into a swap to quickly determine whether or not the particular swap may be subject to a clearing requirement.[107] Paragraph (a) of regulation 50.4 sets forth the four classes of interest rate swaps that are currently required to be cleared pursuant to the First Clearing Requirement Determination.

For the reasons discussed above, the Commission is proposing to amend regulation 50.4(a) as follows: (i) Adding fixed-to-floating interest rate swaps denominated in the nine additional currencies; (ii) adding AUD-denominated basis swaps; (iii) adding AUD-, NOK-, PLN-, and SEK-denominated FRAs; (iv) changing the maximum stated termination date for USD-, GBP-, and EUR-denominated OIS to three years from two years; and (v) adding AUD- and CAD-denominated OIS. The specifications of the swaps set forth in revised regulation 50.4(a) are consistent with those that are the subject of clearing requirements proposed or issued by other jurisdictions.[108]

IV. Proposed Implementation Schedule

The Commission phased in compliance with the First Clearing Requirement Determination according to the schedule contained in regulation 50.25.[109] Under this schedule, compliance was phased in by the type of market participant entering into a swap subject to the new determination. The phase-in took place during a period of 270 days following publication of the final version of the clearing requirement determination in the **Federal Register**. The Commission proposes not to phase in compliance with the proposed expanded fixed-to-floating swap, basis swap, FRA, and OIS classes.

Regulation 50.25 provides the Commission with the discretion to phase in compliance. Regulation 50.25(b) provides that upon issuing a clearing requirement determination under section 2(h)(2) of the Act, the Commission *may* determine, based on the group, category, type, or class of swaps subject to such determination, that the specified schedule for compliance with the requirements of section 2(h)(1)(A) of the Act shall apply. The Commission believes that most market participants that would be subject to the proposed clearing requirement already clear the types of interest rate swaps subject to the existing clearing requirement. The Commission does not expect that these market participants would need to connect to DCOs, document new client clearing arrangements, or otherwise prepare themselves and their customers in order to comply with the proposed clearing requirement as they may have needed to do in order to comply with the First Clearing Requirement Determination.

In addition, whereas upon publication of the First Clearing Requirement Determination, the Commission was uncertain as to whether various types of market participants were ready to submit swaps for clearing,[110] currently a cross-section of market participants clear swaps. Therefore, the Commission believes that it would be reasonable to expect market participants to comply with the proposed clearing requirement 60 days after the final determination is published in the **Federal Register**. That would be consistent with the effective date of most Commission regulations.

As described above, the Commission recognizes that multiple non-U.S. jurisdictions have taken steps to promulgate clearing requirements for the interest rate swaps covered by this proposal.[111] The Commission also understands that most of the other non-U.S. clearing requirements discussed in this proposal will take effect before the end of 2016. However, given that each jurisdiction must follow its own law and practice, the Commission cannot be certain precisely when some non-U.S. clearing requirements will take effect.

Due to the fact that each of those other clearing requirements is being implemented on a different schedule, and each schedule involves multiple steps, the Commission is considering two alternative implementation scenarios. The Commission seeks to create an implementation schedule that results in workable adoption of the swaps clearing requirements discussed in this proposal and is requesting comment and feedback on each of the proposed scenarios below.

A. Implementation Scenario I—Simultaneous Effective Date

First, the Commission is considering publishing a final rule to implement the clearing requirement for all products discussed in this proposal at the same time. Market participants subject to the Commission's jurisdiction would be required to comply with the clearing requirement for these interest rate swaps products 60 days after the Commission's final rule is published in the **Federal Register**. Under this scenario, some interest rate swaps products could be subject to a clearing requirement in the U.S. before there is an analogous clearing requirement in a non-U.S. jurisdiction.

As noted earlier, for all swaps subject to this proposal, the Commission expects that a similar clearing requirement in the non-U.S. jurisdiction will be forthcoming. As of the date of this proposal, the clearing requirements have become effective for the (i) AUD-denominated fixed-to-floating, basis, FRA, and OIS swaps, and (ii) MXN-denominated fixed-to-floating swaps. For these categories of swaps, there will be an analogous swap clearing requirement in at least one non-U.S. jurisdiction that is in effect at the time the Commission's mandate would take effect. For the other categories of swaps, effective dates have been proposed in some but not all cases, and the proposed effective dates could change. In addition, it is likely to be a few months before the Commission could finalize a rule. Thus, for each other category, it is possible that a Commission rule could take effect before or after the effective date in the specified jurisdiction. The Commission currently expects that if it finalizes this rule later this year, the effective date for the expanded termination date range for the OIS swaps denominated in EUR, GBP, and USD, would probably coincide with or lag behind the European Union's implementation by a short time period. By contrast, the effective date for a Commission clearing requirement for the fixed-to-floating swaps denominated in CAD, HKD-, NOK, PLN, SEK, SGD, and CHF, as well as the FRA denominated in NOK-, PLN, and SEK, and the CAD-denominated OIS, could precede the effective date of the analogous clearing requirement in the relevant non-U.S. jurisdiction.

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[104] Letters of counsel on file with the Commission.

[105] Letter of counsel on file with the Commission.

[106] Clearing Requirement Determination Under Section 2(h) of the CEA, 77 FR 74284 (Dec. 13, 2012).

[107] *Id.*

[108] *See* discussion of clearing requirements in other jurisdictions in section I.B.

[109] *See* Swap Transaction Compliance and Implementation Schedule: Clearing Requirement Under Section 2(h) of the CEA, 77 FR 44441 (July 30, 2012).

[110] *Id.* at 44442.

[111] *See* section I.B describing existing and potential clearing requirements in other jurisdictions.

The primary benefit of implementing the clearing requirement for all products subject to this proposal on a single date is that it provides market participants with certainty and makes it easier for industry members to update relevant policies and procedures at one time.

B. Implementation Scenario II—Alternative Compliance Dates To Coordinate Implementation With Non-U.S. Jurisdictions

Second, the Commission is considering proposing a compliance date for the clearing requirement that will take place on the earlier of (i) the date 60 days after the effective date of an analogous clearing requirement that has been adopted by a regulator in a non-U.S. jurisdiction, provided that any such date for any swap covered by the final rule shall not be earlier than the date which is 60 days after the Commission's final rule is published, or (ii) the date two years after the Commission's final rule is published in the **Federal Register**. Under this scenario, compliance with the Commission's clearing requirement will be required for certain interest rate swaps products as non-U.S. jurisdictions make analogous clearing requirements effective, but in all cases compliance with the Commission's clearing requirements will be required no later than two years after the final rule is published.

This implementation scenario blends flexibility with certainty by giving market participants the opportunity to implement clearing for these interest rate swap products over time, while providing a date certain by which market participants will be expected to clear all products subject to this proposal.

The Commission notes that under this scenario, the compliance date for the (i) AUD-denominated fixed-to-floating, basis, FRA, and OIS swaps, and (ii) MXN-denominated fixed-to-floating swaps, would be 60 days after the publication of the final rule in the **Federal Register** because the clearing requirements for these swaps products are effective in non-U.S. jurisdictions currently. Market participants subject to the Commission's jurisdiction would not be required to comply with the swap clearing requirements for the expanded termination dates for the OIS swaps denominated in EUR, GBP, and USD, until 60 days after the later of (i) June 21, 2016 (or such later date when the European Union's clearing requirement for these products first becomes effective) or (ii) the publication date of the final rule in the **Federal Register**, but in no event would the compliance date be later than two years after publication of the final rule in the **Federal Register**.

In order to manage expectations for implementation under the second scenario, the Commission proposes to wait no longer than two years after the final rule is adopted to require clearing for all of the swaps products subject to this proposal.

Request for Comment

The Commission requests comment on not using regulation 50.25 to phase in compliance with the proposed clearing requirement. In addition, the Commission requests comment on the two proposed implementation scenarios, the advantages and disadvantages of each of the options discussed above and whether market participants have a preference for one over the other. In particular, the Commission is seeking feedback on whether all proposed clearing requirements should become effective at the same time or whether the compliance date for a clearing requirement should be related to the date that an analogous clearing requirement becomes effective in a non-U.S. jurisdiction.

V. Cost Benefit Considerations

A. Statutory and Regulatory Background

Proposed revised regulation 50.4(a) identifies certain swaps that would be required to be cleared under section 2(h)(1)(A) of the CEA in addition to those currently required to be cleared by existing regulations 50.2 and 50.4(a). The clearing requirement proposed herein is designed to standardize and reduce counterparty risk associated with swaps, and in turn, mitigate the potential systemic impact of such risks and reduce the likelihood for swaps to cause or exacerbate instability in the financial system. The Commission believes this proposal is consistent with one of the fundamental premises of the Dodd-Frank Act and the 2009 commitments by G20 nations: The use of central clearing can reduce systemic risk.

Regulation 39.5 provides an outline for the Commission's review of swaps for required clearing. Regulation 39.5 allows the Commission to review swaps submitted by DCOs. Under section 2(h)(2)(D) of the CEA, in reviewing swaps for a clearing requirement determination, the Commission must take into account the following factors: (1) Significant outstanding notional exposures, trading liquidity and adequate pricing data; (2) the availability of rule framework, capacity, operational expertise and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded; (3) the effect on the mitigation of systemic risk; (4) the effect on competition; and (5) the existence of reasonable legal certainty in the event of the insolvency of the DCO or one or more of its clearing members.[112] Regulation 39.5 also directs DCOs to provide to the Commission other information, such as product specifications, participant eligibility standards, pricing sources, risk management procedures, a description of the manner in which the DCO has provided notice of the submission to its members and any additional information requested by the Commission.[113] This information is designed to assist the Commission in identifying those swaps that are required to be cleared.

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[112] Section 2(h)(2)(D) of the CEA.

[113] Regulation 39.5(b)(3)(ii).

The following discussion is a consideration of the costs and benefits of the Commission's proposed actions pursuant to the regulatory requirements above.

B. Overview of Swap Clearing

i. How Clearing Reduces Risk

When a bilateral swap is cleared, the DCO becomes the counterparty to each original participant to the swap. This arrangement mitigates counterparty risk to the extent that the clearinghouse may be a more creditworthy counterparty than the original swap participants. Central clearing reduces the interconnectedness of the swap positions of SDs, and other swap market participants, because the DCO, an independent third party that takes no market risk, guarantees the collateralization of swap counterparties' exposures. DCOs have demonstrated resilience in the face of past market stress. DCOs remained financially sound and effectively settled positions in the midst of turbulent financial conditions in 2007–2008 that threatened the financial health and stability of many other types of entities.

The Commission believes that DCOs will continue to be some of the most creditworthy counterparties in the swap markets because DCOs have various tools available that are effective in monitoring and managing counterparty risk. These tools include the contractual right to: (1) Collect initial and variation margin associated with outstanding swap positions; (2) mark positions to market regularly, usually multiple times per day, and issue margin calls whenever the margin in a customer's account has dropped below predetermined levels set by the DCO; (3) adjust the amount of margin that is required to be held against swap positions in light of changing market circumstances, such as increased volatility in the underlying product; and (4) close out the swap positions of a customer that does not meet margin calls within a specified period of time.

Moreover, in the event that a clearing member defaults on its obligations to the DCO, the DCO has numerous remedies available to manage risk, including transferring the swap positions of the defaulted member to another clearing member, and covering any losses that may have accrued with the defaulting member's margin on deposit. In order to transfer the swap positions of a defaulting member and manage the risk of those positions, the DCO has the ability to take a number of steps, including: (1) Hedge the portfolio of positions of the defaulting member to limit future losses; (2) partition the portfolio into smaller pieces; and (3) auction off the pieces of the portfolio, together with their corresponding hedges, to other members of the DCO. In order to cover the losses associated with such a default, the DCO would typically draw from: (1) The initial margin posted by the defaulting member; (2) the guaranty fund contribution of the defaulting member; (3) the DCO's own capital contribution; (4) the guaranty fund contributions of non-defaulting members; and (5) an assessment on the non-defaulting members. These mutualized risk mitigation capabilities are largely unique to clearinghouses and help to ensure that they remain solvent and creditworthy swap counterparties even when clearing members default or there are stressed market circumstances.

ii. The Clearing Requirement and Role of the Commission

With the passage of the Dodd-Frank Act, Congress gave the Commission the responsibility for determining which swaps would be required to be cleared pursuant to section 2(h)(1)(A) of the CEA. Therefore, the costs and benefits associated with a clearing requirement are attributable to both the CEA, as amended by the Dodd-Frank Act, and the Commission acting in accordance with the CEA. As a result, it is difficult to distinguish between the costs associated with the Dodd-Frank Act itself, and the costs associated with the Commission exercising the authority granted to it by the Dodd-Frank Act.

There also is evidence that the interest rate swaps market has been migrating into clearing for multiple years in response to market incentives, in anticipation of the Dodd-Frank Act's clearing requirement, and as a result of the First Clearing Requirement Determination. This shift can be seen in the volumes of interest rate swaps currently being cleared by CME and LCH, the two DCOs that submitted a significant portion of the information contained in this proposal. The open notional value of interest rate swaps cleared at CME has increased from approximately $2.2 trillion to over $5.5 trillion between June 10, 2013 and September 10, 2013, two implementation dates for the First Clearing Requirement Determination.[114] Because the volume of interest rate swaps being cleared also has increased voluntarily, it is impossible to precisely determine the extent to which any increased use of clearing would result from statutory or regulatory requirements, as compared to the desire of swap market participants to clear swaps for the risk-mitigating benefits.[115]

For these reasons, the Commission has determined that the costs and benefits related to the required clearing of the interest rate swaps subject to this proposal are attributable, in part to (1) Congress's stated goal of reducing systemic risk by, among other things, requiring clearing of swaps and (2) the Commission's exercise of its discretion in selecting swaps or classes of swaps to achieve those ends. The Commission will discuss the costs and benefits of the overall move from voluntary clearing to required clearing for the swaps subject to this proposal below.

Request for Comment

The Commission requests comment concerning its assumption that a shift towards clearing may be due to the Dodd-Frank Act's general clearing requirement or other motivations including independent business reasons and incentives from other regulators, such as prudential authorities.

C. Consideration of the Costs and Benefits of the Commission's Action

i. CEA Section 15(a)

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations (collectively referred to herein as the Section 15(a) Factors.) Accordingly, the Commission considers the costs and benefits associated with the proposed clearing requirement determination in light of the Section 15(a) Factors.

In the sections that follow, the Commission considers: (1) The costs and benefits of required clearing for the swaps identified in this proposed rule; (2) the alternatives contemplated by the

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[114] *See* CME comment letter of Sept. 16, 2013 in response the Commission's notice of proposed rulemaking concerning DCOs and International Standards, 78 FR 50260, Aug. 16, 2013. The CME comment letter is available on the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1391.*

[115] It is also possible that some market participants would respond to the proposed rule's requirement that certain interest rate swaps be cleared by decreasing their use of such swaps. This possibility contributes to the uncertainty regarding how the proposed rule will affect the quantity of swaps that are cleared.

Commission and their costs and benefits; (3) the impact of required clearing for the proposed swaps on the Section 15(a) Factors.

ii. Costs and Benefits of Required Clearing Under the Proposed Clearing Requirement Determination

Market participants may incur certain costs in order to clear the interest rate swaps included in the proposed rule. For example, market participants that are not already clearing interest rate swaps either voluntarily or pursuant to the First Clearing Requirement Determination may incur certain startup and ongoing costs related to developing technology and infrastructure, updating or creating new legal agreements, service provider fees, and collateralization of the cleared positions. The per-entity costs described above are likely to vary widely depending on the needs of each market participant. Such costs likely will be lower for the market participants who have used the interest rate swaps covered by this proposal in the past and who currently execute and clear the interest rate swaps covered by the First Clearing Requirement Determination. The opposite likely would be true for market participants that start clearing because of the proposed clearing requirement. The costs of collateralization, on the other hand, are likely to vary depending on whether or not an entity is subject to the margin requirements for uncleared swaps,[116] whether or not an entity is subject to capital requirements, and the differential between the cost of capital for the assets they use as collateral, and the returns realized on those assets.

Market participants that would begin clearing the interest rate swaps subject to this proposal also would obtain the benefits associated with clearing. These benefits include reduced and standardized counterparty risk, increased transparency, and easier access to the swap markets. Together, these benefits will contribute significantly to the stability and efficiency of the financial system. However, these benefits are difficult to quantify with any degree of precision, and market participants already clearing these swaps already realize the benefits of clearing.

Request for Comment

The Commission requests comment concerning the costs of clearing described above for various market participants. The Commission requests comment from both U.S. and non-U.S. swap counterparties that may be affected by the proposed determination.[117] The Commission also requests comment as to the benefits that market participants could realize as a result of the proposed rule.

a. Technology, Infrastructure, and Legal Costs

Market participants already clearing their swaps may incur costs in making necessary changes to technology systems to support the clearing required by the proposed rule. Market participants that are not currently clearing swaps may incur costs if they need to implement middleware technology to connect to FCMs that will clear their transactions. Similarly, legal costs will vary depending on the extent to which a market participant is already clearing swaps. The Commission does not have the information necessary to determine either the costs associated with entities that need to establish relationships with one or more FCMs or the costs associated with entities that already have relationships with one or more FCMs but need to revise their agreements.[118] The costs are likely to depend on the specific business needs of each entity and would therefore vary widely among market participants. As a general matter, the Commission would expect that most market participants already will have undertaken the steps necessary to accommodate the clearing of required swaps, and that the burden associated with these additional interest rate swap products should be minimal.

Request for Comment

The Commission requests comment, including any quantifiable data and analysis, on the changes that market participants will have to make to their technological and legal infrastructures in order to clear the interest rate swaps that are subject to the proposed clearing requirement. In particular, the Commission requests comment concerning the following questions: How many market participants may have to establish new relationships with FCMs, or significantly upgrade those relationships based on the inclusion of these additional products to the clearing requirement?

b. Ongoing Costs Related to FCMs and Other Service Providers

In addition to costs associated with technological and legal infrastructures, market participants transacting in swaps subject to the proposed clearing requirement will face ongoing costs associated with fees charged by FCMs. DCOs typically charge FCMs an initial transaction fee for each cleared interest rate swap its customers enter, as well as an annual maintenance fee for each open position. In addition, the Commission understands that customers that occasionally transact in swaps are typically required to pay a monthly or annual fee to each FCM.[119]

As discussed above, it is difficult to predict precisely how the proposed requirement to clear the additional swaps covered by this proposed rule will increase the use of swap clearing, as compared to the use of clearing that would occur in the absence of the requirement. The Commission expects that the proposed clearing requirement generally would increase the use of clearing, leading in most cases to an incremental increase in the transaction costs noted above. However, the Commission would expect that most market participants already will have undertaken the steps necessary to accommodate the clearing of required swaps, and that the burden associated with the additional interest rate swap products should be minimal.

Request for Comment

The Commission requests additional comment, data, and analysis regarding the fee structures of FCMs in general, and in particular as they relate to the clearing of the types of swaps covered by the proposed rule.

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[116] The Commission's margin requirements for uncleared swaps are codified in subpart E of part 23 of the Commission's regulations.

[117] *See* section II.B.iii.a.1 discussing how the Commission has considered the swap clearing requirement to apply in a cross-border context.

[118] The Commission does not have current information regarding such fees; commenters are requested to provide the necessary data where available. In the First Clearing Requirement Determination (77 FR 74284 at 74324), the Commission noted that it had been estimated that it would cost smaller financial institutions between $2,500 and $25,000 to review and negotiate legal agreements to establish a new business relationship with an FCM (citing comment letters from Chatham Financial and Webster Bank submitted to the Commission in 2012 in response to the Commission's request for comment concerning the cost benefit analysis regarding a potential clearing exception for certain small financial institutions under the end-user exception, available at: *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58077* and *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58076*).

[119] The Commission does not have current information regarding such fees; commenters are requested to provide the necessary data where available. In the First Clearing Requirement Determination (77 FR 74284 at 74325), the Commission noted that customers that occasionally transact in swaps are typically required to pay a monthly or annual fee to each FCM that ranges from $75,000 to $125,000 per year (citing comment letters from Chatham Financial and Webster Bank).

c. Costs Related to Collateralization of Cleared Swap Positions

Market participants that enter into the interest rate swaps subject to the proposed rule will be required to post initial margin at a DCO. The Commission understands that some of the swaps subject to this proposal are currently being cleared on a voluntary basis. Specifically, the Commission estimates the following.

TABLE 17—PART 45 DATA ESTIMATED PERCENTAGES OF THE INTEREST RATE SWAP MARKET CLEARED VOLUNTARILY SECOND QUARTER 2015[120]

Product	Percentage of market cleared
AUD-denominated fixed-to-floating interest rate swap	65
CAD-denominated fixed-to-floating interest rate swap	72
CHF-denominated fixed-to-floating interest rate swap	83
HKD-denominated fixed-to-floating interest rate swap	49
MXN-denominated fixed-to-floating interest rate swap	25
NOK-denominated fixed-to-floating interest rate swap	40
PLN-denominated fixed-to-floating interest rate swap	66
SEK-denominated fixed-to-floating interest rate swap	45
SGD-denominated fixed-to-floating interest rate swap	24
AUD-denominated basis swap	28
AUD-denominated FRA	0
NOK-denominated FRA	94
PLN-denominated FRA	32
SEK-denominated FRA	25
EUR-denominated OIS (2–3 year term)	100
GBP-denominated OIS (2–3 year term)	100
USD-denominated OIS (2–3 year term)	100
AUD-denominated OIS	18
CAD-denominated OIS	88

With information provided by CME, LCH, and SGX, the Commission has estimated the amounts of initial margin currently on deposit at these three DCOs with respect to the swaps that are the subject of this proposed determination. Using this information, the Commission estimates that this clearing requirement determination would require market participants to post the following amounts of additional initial margin for each of the interest rate swaps covered by this proposed determination.[121]

TABLE 18—ESTIMATED ADDITIONAL AMOUNTS OF INITIAL MARGIN DUE TO PROPOSED CLEARING REQUIREMENT

Swap	Amount of margin USD equivalent
AUD-denominated Fixed-to-floating interest rate swap	$1,107,287,108
CAD-denominated Fixed-to-floating interest rate swap	419,208,078
CHF-denominated Fixed-to-floating interest rate swap	105,963,972
HKD-denominated Fixed-to-floating interest rate swap	216,677,823
MXN-denominated Fixed-to-floating interest rate swap	1,867,370,001
NOK-denominated Fixed-to-floating interest rate swap	241,288,835
PLN-denominated Fixed-to-floating interest rate swap	84,789,768
SEK-denominated Fixed-to-floating interest rate swap	603,185,677
SGD-denominated Fixed-to-floating interest rate swap	1,113,041,264
AUD-denominated basis swap	612,166,597
AUD-denominated FRA	[122] N/A
NOK-denominated FRA	10,746,747
PLN-denominated FRA	186,238,075
SEK-denominated FRA	942,845,508
EUR-denominated OIS with terms of 2–3 years	0
GBP-denominated OIS with terms of 2–3 years	0
USD-denominated OIS with terms of 2–3 years	0
AUD-denominated OIS	84,254,007
CAD-denominated OIS	6,630,342
Total	7,601,693,801

The Commission believes that these estimates may be higher than the actual amounts of initial margin that would need to be posted as a result of this proposed rule because these estimates are based on several assumptions. First, the estimates assume that none of the swaps that are currently executed on an uncleared basis are currently collateralized. By contrast, an ISDA survey reported that as of December 31, 2014, 88.9% of all uncleared fixed income derivative transactions are subject to a credit support annex.[123]

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[120] The Commission used part 45 data to make these estimates based on swap activity occurring during the second quarter of 2015. The data set does not include swaps entered into by affiliated counterparties. Data from the third and fourth quarters of 2015 were used to calculate the estimates for EUR-, GBP-, and USD-denominated OIS with terms of two to three years. Data from January 2016 was used to calculate the estimates for AUD- and CAD-denominated OIS.

[121] The Commission made these calculations using the following formula:

$X/Y - X$.

X = Current value of margin on deposit at DCOs for an interest rate swap denominated in a particular currency.

Y = Percentage of the market for that swap that is currently cleared.

[122] The amount of additional margin required for AUD-denominated FRAs cannot currently be estimated.

[123] *See* ISDA Margin Survey 2015 at page 12, Table 6, available at: *http://www2.isda.org/functional-areas/research/surveys/margin-surveys/*.

Moreover, uncleared swaps between certain SDs, MSPs, and "financial end-users," will be subject to initial and variation margin requirements pursuant to the Commission's margin regulations for uncleared swaps, as discussed further below.[124] Second, the estimates listed in Table 18 are based on the assumption that none of the swaps, when entered into on an uncleared basis, are priced to include implicit contingent liabilities and counterparty risk borne by the counterparty to the swap. Third, not all swaps having the additional denominations or maturities proposed herein will necessarily be eligible for clearing if they are not otherwise covered by the clearing requirement (*i.e.*, the specifications set forth in proposed revised regulation 50.4(a)) or if the swaps have terms which prevent them from being cleared. Finally, certain entities may elect an exception or exemption from the clearing requirement, which would not require such an entity to clear the swaps covered by this proposal.[125]

The amounts of initial margin that the Commission estimates would be required to be posted due to this proposed rule (listed in Table 18) do not include the costs that some market participants may incur to obtain this collateral. Some entities may have to raise funds to acquire assets that a DCO accepts as initial margin. The greater the funding cost relative to the rate of return on the asset used as initial margin, the greater the cost of procuring this asset. Quantifying this cost with any precision is challenging because different entities may have different funding costs and may choose assets with different rates of return. One way to estimate the funding cost of procuring assets to be used as initial margin is to compare the rate of return, or yield, on an asset that is usually accepted by a DCO for initial margin with the cost of funding the asset with debt financing. Based on the Commission's experience and understanding, the Commission has decided to estimate this cost using an average borrowing cost of 4.4% [126] and then subtracting the 1.8% return that a 5-year U.S. Treasury bond yields.[127] This calculation produces an estimated funding cost of 2.6%. By multiplying the total estimated initial margin amount of $7,601,693,801 (Table 18) by 2.6%, the Commission estimates that the cost of funding the total initial margin that would be required to be posted due to this proposed rule is approximately $197,644,039. It also should be noted that some entities, such as pension funds and asset managers, may use as initial margin assets that they already own. In these cases, the market participants would not incur a funding cost in order to post initial margin.

The Commission requests comments on all aspects of quantifying the cost of funding initial margin that would be required to be posted pursuant to this proposed rule. In particular, the Commission requests comment on funding costs that market participants may face due to interest rates on bonds issued by a sovereign nation that also issues the currency in which a swap subject to this proposed determination is denominated. The Commission recognizes that CME and LCH accept as initial margin bonds issued by several sovereigns and that market participants may post such bonds as initial margin if the Commission adopted this proposed rule.

The Commission recognizes further that the new initial margin amounts that would be required to be posted as a result of this proposed clearing requirement will, for entities required to post initial margin under both the clearing requirement and the uncleared swap margin regulations, replace the initial margin amount that will be required pursuant to the uncleared swap margin regulations. The uncleared swap margin regulations require SDs, MSPs, and certain "financial end-users" to post and collect initial and variation margin for uncleared swaps, subject to various conditions and limitations.[128] The Commission expects that the initial margin that would be required to be posted for a cleared swap subject to this proposed determination would typically be less than the initial margin that would be required to be posted for uncleared swaps pursuant to the uncleared swap margin regulations. Whereas the initial margin requirement for cleared swaps must be established according to a margin period of risk of at least five days,[129] under the uncleared swap margin regulations, the minimum initial margin requirement is set with a margin period of risk of 10-days or, under certain circumstances, less or no initial margin for inter-affiliate transactions.[130] The uncleared swap margin regulations will be phased in between September 1, 2016 and September 1, 2020.

With respect to swaps that would be subject to this proposed clearing requirement determination, but not subject to the uncleared swap margin regulations, the Commission believes that the new initial margin amounts that would be deposited would be a displacement of a cost that is currently embedded in the prices and fees for transacting the swaps on an uncleared and uncollateralized basis rather than a new cost. Entering into a swap is costly for any market participant because of the default risk posed by its counterparty, whether the counterparty is a DCO, SD, MSP, or other market participant. When a market participant faces the DCO, the DCO accounts for that counterparty credit risk by requiring collateral to be posted, and the cost of capital for the collateral is part of the cost that is necessary to maintain the swap position. When a market participant faces an SD or other counterparty in an uncleared swap, however, the uncleared swap contains an implicit line of credit upon which the market participant effectively draws when its swap position is out of the money. Counterparties charge for this implicit line of credit in the spread they offer on uncollateralized, uncleared swaps. It has been argued that the cash flows of an uncollateralized swap (*i.e.*, a swap with an implicit line of credit) are, over time, substantially equivalent to the cash flows of a collateralized swap with an explicit line of credit.[131] And because the counterparty credit risk created by the implicit line of credit

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Although it is unclear exactly how many of the derivatives covered by this survey are swaps, it is reasonable to assume that a large part of them are.

[124] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Final Rule, 81 FR 636 (Jan. 6, 2016) (hereinafter "uncleared swap margin regulations"). The U.S. prudential regulators finalized similar regulations in Oct. 2015.

[125] *See* subpart C of part 50 (Exceptions and Exemptions to the Clearing Requirement). There also is a possibility that the estimates listed in Table 18 are lower than the actual figures because certain market participants with directional portfolios may be unable to benefit from margin offsets that could come from clearing. However, the Commission believes that the estimates listed in Table 18 are more likely to overstate the required additional margin amounts than to underestimate them.

[126] Bank of America Merrill Lynch U.S. Corporate BBB effective yield for December 2015.

[127] In December 2015, a 5-year U.S. treasury bond yielded 1.8%.

[128] *See* subpart E of part 23 of the Commission's regulations. Swap clearing requirements under part 50 of the Commission's regulations apply to a broader scope of market participants than the uncleared swap margin regulations. For example, under subpart E of part 23, a financial end-user that does not have "material swaps exposure" (as defined by regulation 23.151) is not required to post initial margin, but such an entity may be subject to the swap clearing requirement.

[129] Commission regulation 39.13(g)(2)(ii)(C).

[130] Commission regulations 23.154(b)(2)(i) and 23.159. *See also* Margin and Capital Requirements for Covered Swap Entities, 80 FR 77840 (Nov. 30, 2015).

[131] *See* Antonio S. Mello and John E. Parsons, "Margins, Liquidity, and the Cost of Hedging." MIT Center for Energy and Environmental Policy Research, May 2012, available at: *http://dspace.mit.edu/bitstream/handle/1721.1/70896/2012-005.pdf?sequence=1.*

is the same as the counterparty risk that would result from an explicit line of credit provided to the same market participant, to a first order approximation, the charge for each should be the same as well.[132] This means that the cost of capital for additional collateral posted as a consequence of requiring uncollateralized swaps to be cleared takes a cost that is implicit in an uncleared, uncollateralized swap and makes it explicit. This observation applies to capital costs associated with both initial margin and variation margin.

In addition, the proposed rule may result in added operational costs. With uncleared swaps, counterparties may agree not to collect variation margin until certain thresholds of exposure are reached, thus reducing or entirely eliminating the need to exchange variation margin as exposure changes. DCOs, on the other hand, collect and pay variation margin on a daily basis and sometimes more frequently. As a consequence, increased required clearing may increase certain operational costs associated with exchanging variation margin with the DCO (although the exchange of variation margin may be expected to provide the benefit of lowering the build-up of current exposure). On the other hand, increased clearing also could lead to reduced operational costs related to valuation disputes about posted collateral, as parties to cleared swaps agree to post collateral that is less susceptible to valuation disputes.

The proposed rule also may result in additional costs for clearing members in the form of guaranty fund contributions. However, it also could decrease guaranty fund contributions for certain clearing members. Once the proposed clearing requirement takes effect, market participants that currently transact swaps bilaterally must either become clearing members of a DCO or submit such swaps for clearing through an existing clearing member. A market participant that becomes a direct clearing member must make a guaranty fund contribution, while a market participant that clears its swaps through a clearing member may pay higher fees if the clearing member passes the costs of the guaranty fund contribution to its customers. While the addition of new clearing members and new customers for existing clearing members may result in an increase in guaranty fund requirements, it should be noted that if (1) new clearing members are not among the two clearing members used to calculate the guaranty fund and (2) any new customers trading through a clearing member do not increase the size of uncollateralized risks at either of the two clearing members used to calculate the guaranty fund, all else held constant, existing clearing members may experience a decrease in their guaranty fund requirement.

Request for Comment

The Commission invites further comment regarding the total amount of additional collateral that would be posted due to required clearing of the interest rate swaps covered by this proposed clearing requirement determination. Furthermore, the Commission invites comment regarding the cost of capital and returns on capital for that collateral. The Commission also invites comment on the effects of required clearing on the capital requirements for financial institutions. Finally, the Commission invites comment regarding the costs and benefits associated with operational differences related to the collateralization of uncleared versus cleared swaps. Please supply quantifiable data and analysis regarding these subjects, if possible.

d. Benefits of Clearing

As noted above, the benefits of swap clearing are generally significant. The Commission believes that while the requirement to margin uncleared swaps in certain circumstances will also mitigate counterparty credit risk, such risk is mitigated further for swaps that are cleared through a central counterparty. Moreover, as discussed above, the proposed clearing determination would apply to a larger set of market participants than the uncleared swaps margin requirements. Thus, to the extent that the proposed clearing requirement for additional interest rate swaps leads to increased clearing, these benefits are likely to result. As is the case for the costs noted above, it is impossible to predict the precise extent to which the use of clearing will increase as a result of the proposed rule, and therefore the benefits of the proposed rule cannot be precisely quantified. However, the Commission believes that the benefits of increased clearing resulting from the proposed rule will be substantial, because the additional swaps required to be cleared by the proposed rule have significant volumes within the overall interest rate swap market.

The proposed rule's requirement that certain swaps be cleared is expected to increase the number of swaps in which market participants will face a DCO, and therefore, will face a highly creditworthy counterparty. As discussed above, DCOs are some of the most creditworthy counterparties in the swap market because of the risk management tools they have available.

Request for Comment

The Commission requests comment on whether benefits will result from the proposed rule, and, if so, the expected magnitude of such benefits.

Also, would the proposed rule provide benefits by furthering international harmonization of clearing requirements? As noted above, if a non-U.S. jurisdiction were to proceed with a swap clearing requirement determination for an interest rate swap denominated in a particular currency, and the Commission's clearing requirement did not cover that swap, the market participants might be able to avoid the non-U.S. jurisdiction's requirement by entering into the swap in the U.S.[133]

D. Costs and Benefits of the Proposed Rule as Compared to Alternatives

The proposed rule is a function of both the market importance of these products and the fact that they already are widely cleared. The Commission believes these interest rate swaps are appropriate to require to be cleared because they are widely used and already have a blueprint for clearing and risk management.

Given the implementation of the Commission's First Clearing Requirement Determination for interest rate swaps, and the widespread use of clearing for the additional products included in this proposal, DCOs, FCMs, and market participants already have experience clearing the types of swaps proposed for required clearing. The Commission therefore expects that DCOs and FCMs are prepared to handle the increases in volumes and outstanding notional amounts in these swaps that are likely to result from the proposed rule. Because of the wide use of these swaps and their importance to the market, and because these swaps are already successfully being cleared, the Commission is proposing to subject certain additional interest rate swaps to the clearing requirement.

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[132] *See id.*, Mello and Parsons state in their paper: "[h]edging is costly. But the real source of the cost is not the margin posted, but the underlying credit risk that motivates counterparties to demand that margin be posted." *Id.* at 12. They go on to demonstrate that, "[t]o a first approximation, the cost charged for the non-margined swap must be equal to the cost of funding the margin account. This follows from the fact that the non-margined swap just includes funding of the margin account as an embedded feature of the package." *Id.* at 15–16.

[133] *See* section I.B. discussing clearing requirements in non-U.S. jurisdictions.

The Commission is considering two alternative implementation scenarios. First, the Commission is considering a scenario under which the clearing requirement for all products subject to this proposal would take effect at the same time, regardless of whether an analogous clearing requirement has been promulgated by an authority of a non-U.S. jurisdiction. Implementing the clearing requirement for all products subject to this proposal on a single date would give market participants certainty and make it easier for industry members to update relevant policies and procedures at one time.

Second, the Commission is considering a scenario under which compliance with the clearing requirement will be required upon the earlier of (i) the date 60 days after the effective date of an analogous clearing requirement that has been adopted by a regulator in a non-U.S. jurisdiction, provided that any such date for any swap covered by the final rule shall not be earlier than the date which is 60 days after the Commission's final rule is published, or (ii) the date two years after the Commission's final rule is published in the **Federal Register**. This scenario would allow the Commission to coordinate compliance dates with the effective dates set by non-U.S. jurisdictions in order to promote international harmonization of clearing requirements while maintaining certainty that compliance with all proposed clearing requirements will be required within a specific time period (*i.e.*, all products subject to this proposal will be subject to a clearing requirement no later than two years after the final rule is published).

Request for Comment

The Commission requests comment on the costs and benefits of adding nine currencies to the fixed-to-floating interest rate swap class, adding AUD-denominated basis swaps to the basis swap class, adding AUD-, NOK-, PLN-, SEK-denominated FRA swaps to the FRA class, extending the termination date range for the USD, GBP, and EUR–OIS covered by the OIS class, and adding AUD- and CAD-denominated OIS to the OIS class. In addition, the Commission requests comment regarding the costs and benefits of the two alternative proposals for the finalization and implementation of the clearing requirements. The Commission requests that, if possible, commenters quantify costs and benefits that may result either from the approach proposed by the Commission or from alternatives that commenters believe the Commission should consider.

E. Section 15(a) Factors

As noted above, the requirement to clear the fixed-to-floating interest rate swaps, basis swaps, FRAs, and OIS covered by this proposed rule is expected to result in increased use of clearing, although it is impossible to quantify with certainty the extent of that increase. Thus, this section discusses the expected results from an overall increase in the use of swap clearing in terms of the factors set forth in section 15(a) of the CEA.

i. Protection of Market Participants and the Public

As described above, required clearing of the interest rate swaps identified in this proposed rule is expected to most likely reduce counterparty risk for market participants that clear those swaps because they will face the DCO rather than another market participant that lacks the full array of risk management tools that the DCO has at its disposal. This also reduces uncertainty in times of market stress because market participants facing a DCO are less concerned with the impact of such stress on the solvency of their counterparty for cleared trades.

By proposing to require clearing of certain interest rate swaps, all of which are already available for clearing, the Commission expects to encourage a smooth transition by creating an opportunity for market participants to work out challenges related to required clearing of swaps while operating in familiar terrain. More specifically, the DCOs currently clearing these interest rate swaps, CME, Eurex, LCH, and SGX will clear an increased volume of swaps that they already understand and have experience managing. Similarly, FCMs likely will realize increased customer and transaction volume as the result of the requirement, but will not have to simultaneously learn how to operationalize clearing for the covered interest rate swaps. The experience of FCMs with these products also is likely to benefit customers that are new to clearing, as the FCM guides them through initial experiences with cleared swaps.

In addition, uncleared swaps subject to collateral agreements can be the subject of valuation disputes. These valuation disputes sometimes require several months or longer to resolve. Potential future exposures can grow significantly and even beyond the amount of initial margin posted during that time, leaving one of the two counterparties exposed to counterparty credit risk. DCOs virtually eliminate valuation disputes for cleared swaps, as well as the risk that uncollateralized exposure can develop and accumulate during the time when such a dispute would have otherwise occurred, thus providing additional protection to market participants who transact in swaps that are required to be cleared.

As far as costs are concerned, market participants that do not currently have established clearing relationships with an FCM will have to set up and maintain such a relationship in order to clear swaps that are required to be cleared. As discussed above, market participants that conduct a limited number of swaps per year likely will be required to pay monthly or annual fees that FCMs charge to maintain both the relationship and outstanding swap positions belonging to the customer. In addition, the FCM is likely to pass along fees charged by the DCO for establishing and maintaining open positions.

It is expected that most market participants already will have had experience complying with prior clearing requirements and that the incremental burdens associated with clearing these additional products should be minimal, especially given the similarities that these products have to those already included within the prior clearing determination and the fact that they are already widely cleared products.

ii. Efficiency, Competitiveness, and Financial Integrity of Swap Markets

Swap clearing, in general, is expected to reduce uncertainty regarding counterparty risk in times of market stress and promote liquidity and efficiency during those times. Increased liquidity promotes the ability of market participants to limit losses by exiting positions effectively and efficiently when necessary in order to manage risk during a time of market stress.

In addition, to the extent that positions move from facing multiple counterparties in the bilateral market to being cleared through a smaller number of clearinghouses, clearing facilitates increased netting. This reduces the amount of collateral that that a party must post in margin accounts.

As discussed above, in setting forth this proposed clearing requirement determination, the Commission took into account a number of specific factors that relate to the financial integrity of the swap markets. Specifically, the discussion above includes an assessment of whether CME, Eurex, LCH, and SGX, each of which currently clear interest rate swaps, have the rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear these swaps on terms that are consistent with the material terms and trading conventions on which the contract is then traded. This proposed clearing requirement determination also considered the resources of DCOs to handle additional clearing during stressed and non-stressed market conditions, as well as the existence of reasonable legal certainty in the event of a clearing member or DCO insolvency.[134]

As discussed above, bilateral swaps create counterparty risk that may lead market participants to discriminate among potential counterparties based on their creditworthiness. Such discrimination is expensive and time consuming insofar as market participants must conduct due diligence in order to evaluate a potential counterparty's creditworthiness. Requiring certain types of swaps to be cleared reduces the number of transactions for which such due diligence is necessary, thereby contributing to the efficiency of the swap markets.

In proposing a clearing requirement for interest rate swaps, the Commission must consider the effect on competition, including appropriate fees and charges applied to clearing. As discussed in more detail in section II.B.iii.d, there are a number of potential outcomes that may result from required clearing. Some of these outcomes may impose costs, such as if a DCO possessed market power and exercised that power in an anticompetitive manner, and some of the outcomes would be positive, such as if the clearing requirement facilitated a stronger entry opportunity for competitors.

iii. Price Discovery

Clearing, in general, encourages better price discovery because it eliminates the importance of counterparty creditworthiness in pricing swaps cleared through a given DCO. That is, by making the counterparty creditworthiness of all swaps of a certain type essentially the same, prices should reflect factors related to the terms of the swap, rather than the idiosyncratic risk posed by the entities trading it.

As discussed in section II.B.iii.a above, CME, Eurex, LCH, and SGX obtain adequate pricing data for the interest rate swaps that they clear. Each of these DCOs establishes a rule framework for its pricing methodology and rigorously tests its pricing models to ensure that the cornerstone of its risk management regime is as sound as possible.

iv. Sound Risk Management Practices

If a firm enters into uncleared and uncollateralized swaps to hedge certain positions and then the counterparty to those swaps defaults unexpectedly, the firm could be left with large outstanding exposures. Even for uncleared swaps that are subject to the Commission's uncleared swap margin regulations, some counterparty credit risk remains.[135] As stated above, when a swap is cleared the DCO becomes the counterparty facing each of the two original participants in the swap. This standardizes and reduces counterparty risk for each of the two original participants. To the extent that a market participant's hedges comprise swaps that are required to be cleared, the requirement enhances their risk management practices by reducing their counterparty risk.

In addition, required clearing reduces the complexity of unwinding or transferring swap positions from large entities that default. Procedures for transfer of swap positions and mutualization of losses among DCO members are already in place, and the Commission anticipates that they are much more likely to function in a manner that enables rapid transfer of defaulted positions than legal processes that would surround the enforcement of bilateral contracts for uncleared swaps.[136]

Central clearing has evolved since the 2009 G20 Pittsburgh Summit, when G20 leaders committed to central clearing of all standardized swaps. The percentage of the swap market that is centrally cleared has increased significantly, clearinghouses have expanded their offerings, and the range of banks and other financial institutions that submit swaps to clearinghouses has broadened. At the same time, the numbers of swap clearinghouses and swap clearing members has remained highly concentrated. This has created concerns about a concentration of credit and liquidity risk at clearinghouses that could have systemic implications.[137] However, the Commission believes that DCOs are capable of risk managing the swaps that are the subject of this proposed determination. Moreover, because only a very small percentage of the swap market would be affected by this proposed clearing requirement determination and because significant percentages of the swaps covered by this proposed determination are already cleared voluntarily, this proposed determination would only marginally increase the extent to which credit risk and liquidity risk is concentrated at DCOs. The Commission requests comments on this issue.

v. Other Public Interest Considerations

In September 2009, the President and the other leaders of the G20 nations met in Pittsburgh and committed to a program of action that includes, among other things, central clearing of all standardized swaps.[138] The Commission believes that this clearing requirement would represent another step toward the fulfillment of the G20's commitment.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[139] The proposed clearing requirement determination contained in this proposed rulemaking will not affect any small entities, as the RFA uses that term. Pursuant to section 2(e) of the CEA, only eligible contract participants (ECPs) may enter into swaps, unless the swap is listed on a DCM. The Commission has previously determined that ECPs are not small entities for purposes of the RFA.[140] The proposed clearing requirement determination would only affect ECPs because all persons that are not ECPs are required to execute their swaps on a DCM, and all contracts executed on a DCM must be cleared by a DCO, as required by statute and regulation, not by operation of any clearing requirement determination. Therefore, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

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[134] *See* section II.B.iii.b and section II.B.ii i.e.

[135] For example, there is a small risk of a sudden price move so large that a counterparty would be unable to post sufficient variation margin to cover the loss, which may exceed the amount of initial margin posted, and could be forced into default.

[136] As discussed in sections II.A and V.B., sound risk management practices are critical for all DCOs, especially those offering clearing for interest rate swaps. In section II.B.ii, the Commission considered whether each § 39.5(b) submission under review was consistent with the core principles for DCOs. In particular, the Commission considered the DCO submissions in light of Core Principle D, which relates to risk management. *See also* section II.B.iii for a discussion of the effect on the mitigation of systemic risk in the interest rate swap market, as well as the protection of market participants during insolvency events at either the clearing member or DCO level.

[137] *See* Dietrich Domanski, Leonardo Gambacorta, and Cristina Picillo, "Central clearing: Trends and current issues," BIS Quarterly Review, Dec. 2015, available at: *http://www.bis.org/publ/qtrpdf/r__qt1512g.pdf.* and 2015 Financial Stability Report published by the Office of Financial Research of the U.S. Department of the Treasury, available at: *http://financialresearch.gov/financial-stability-reports/files/OFR__2015-Financial-Stability-Report__12-15-2015.pdf.*

[138] The G20 Leaders Statement made in Pittsburgh is available at: *http://www.g20.utoronto.ca/2009/2009communique0925.html.*

[139] 5 U.S.C. 601 *et seq.*

[140] 66 FR 20740, 20743 (Apr. 25, 2001).

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)[141] imposes certain requirements on federal agencies, including the Commission, in connection with conducting or sponsoring any collection of information as defined by the PRA. This rulemaking will not require a new collection of information from any persons or entities.

List of Subjects in 17 CFR Part 50

Business and industry, Clearing, Swaps.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 50 as follows:

PART 50—CLEARING REQUIREMENT AND RELATED RULES

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 7 U.S.C. 2(h) and 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376.

■ 2. Revise § 50.4(a) to read as follows:

§ 50.4 Classes of swaps required to be cleared.

(a) *Interest rate swaps.* Swaps that have the following specifications are required to be cleared under section 2(h)(1) of the Act, and shall be cleared pursuant to the rules of any derivatives clearing organization eligible to clear such swaps under § 39.5(a) of this chapter.

Specification	Fixed-to-Floating Swap Class					
1. Currency	Australian Dollar (AUD).	Canadian Dollar (CAD).	Euro (EUR)	Hong Kong Dollar (HKD).	Mexican Peso (MXN).	Norwegian Krone (NOK).
2. Floating Rate Indexes	BBSW	CDOR	EURIBOR	HIBOR	TIIE	NIBOR.
3. Stated Termination Date Range.	28 days to 30 years.	28 days to 30 years.	28 days to 50 years.	28 days to 10 years.	28 days to 21 years.	28 days to 10 years.
4. Optionality	No	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No	No	No.

Specification	Fixed-to-Floating Swap Class						
1. Currency	Polish Zloty (PLN).	Singapore Dollar (SGD).	Swedish Krona (SEK).	Swiss Franc (CHF).	Sterling (GBP).	U.S. Dollar (USD).	Yen (JPY).
2. Floating Rate Indexes	WIBOR	SOR–VWAP	STIBOR	LIBOR	LIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range.	28 days to 10 years.	28 days to 10 years.	28 days to 15 years.	28 days to 30 years.	28 days to 50 years.	28 days to 50 years.	28 days to 30 years.
4. Optionality	No	No	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No	No	No	No.

Specification	Basic Swap Class				
1. Currency	Australian Dollar (AUD).	Euro (EUR)	Sterling (GBP)	U.S. Dollar (USD)	Yen (JPY).
2. Floating Rate Indexes	BBSW	EURIBOR	LIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range	28 days to 30 years.	28 days to 50 years.	28 days to 50 years.	28 days to 50 years.	28 days to 30 years.
4. Optionality	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No	No.

Specification	Forward Rate Agreement Class			
1. Currency	Australian Dollar (AUD).	Euro (EUR)	Polish Zloty (PLN).	Norwegian Krone (NOK).
2. Floating Rate Indexes	BBSW	EURIBOR	WIBOR	NIBOR.
3. Stated Termination Date Range	3 days to 3 years.	3 days to 3 years.	3 days to 2 years.	3 days to 2 years.
4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No.

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[141] 44 U.S.C. 3507(d).

Specification	Forward Rate Agreement Class			
1. Currency	Swedish Krona (SEK).	Sterling (GBP)	U.S. Dollar (USD).	Yen (JPY).
2. Floating Rate Indexes	STIBOR	LIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range	3 days to 3 years.	3 days to 3 years.	3 days to 3 years.	3 days to 3 years.
4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No.

Specification	Overnight Index Swap Class				
1. Currency	Australian Dollar (AUD).	Canadian Dollar (CAD).	Euro (EUR)	Sterling (GBP)	U.S. Dollar (USD).
2. Floating Rate Indexes	AONIA–OIS	CORRA–OIS	EONIA	SONIA	FedFunds.
3. Stated Termination Date Range	7 days to 2 years.	7 days to 2 years.	7 days to 3 years.	7 days to 3 years.	7 days to 3 years.
4. Optionality	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No	No.

* * * * *

Issued in Washington, DC, on June 9, 2016, by the Commission.

Christopher J. Kirkpatrick,
Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Clearing Requirement Determination Under Section 2(h) of the CEA for Interest Rate Swaps—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2016–14035 Filed 6–15–16; 8:45 am]

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FEDERAL REGISTER

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Part VII

The President

Proclamation 9461—Honoring the Victims of the Attack in Orlando, Florida

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Presidential Documents

Title 3—

The President

Proclamation 9461 of June 12, 2016

Honoring the Victims of the Attack in Orlando, Florida

By the President of the United States of America

A Proclamation

As a mark of respect for the victims of the act of hatred and terror perpetrated on Sunday, June 12, 2016, in Orlando, Florida, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, June 16, 2016. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of June, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

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H.R. 136/P.L. 114–166

To designate the facility of the United States Postal Service located at 1103 USPS Building 1103 in Camp Pendleton, California, as the "Camp Pendleton Medal of Honor Post Office". (June 13, 2016; 130 Stat. 419)

H.R. 433/P.L. 114–167

To designate the facility of the United States Postal Service located at 523 East Railroad Street in Knox, Pennsylvania, as the "Specialist Ross A. McGinnis Memorial Post Office". (June 13, 2016; 130 Stat. 420)

H.R. 1132/P.L. 114–168

To designate the facility of the United States Postal Service located at 1048 West Robinhood Drive in Stockton, California, as the "W. Ronald Coale Memorial Post Office Building". (June 13, 2016; 130 Stat. 422)

H.R. 2458/P.L. 114–169

To designate the facility of the United States Postal Service located at 5351 Lapalco Boulevard in Marrero, Louisiana, as the "Lionel R. Collins, Sr. Post Office Building". (June 13, 2016; 130 Stat. 423)

H.R. 2928/P.L. 114–170

To designate the facility of the United States Postal Service located at 201 B Street in Perryville, Arkansas, as the "Harold George Bennett Post Office". (June 13, 2016; 130 Stat. 424)

H.R. 3082/P.L. 114–171

To designate the facility of the United States Postal Service located at 5919 Chef Menteur Highway in New Orleans, Louisiana, as the "Daryle Holloway Post Office Building". (June 13, 2016; 130 Stat. 425)

H.R. 3274/P.L. 114–172

To designate the facility of the United States Postal Service located at 4567 Rockbridge Road in Pine Lake, Georgia, as the "Francis Manuel Ortega Post Office". (June 13, 2016; 130 Stat. 426)

H.R. 3601/P.L. 114–173

To designate the facility of the United States Postal Service located at 7715 Post Road, North Kingstown, Rhode Island, as the "Melvoid J. Benson Post Office Building". (June 13, 2016; 130 Stat. 427)

H.R. 3735/P.L. 114–174

To designate the facility of the United States Postal Service located at 200 Town Run Lane in Winston Salem, North Carolina, as the "Maya Angelou Memorial Post Office". (June 13, 2016; 130 Stat. 428)

H.R. 3866/P.L. 114–175

To designate the facility of the United States Postal Service located at 1265 Hurffville Road in Deptford Township, New Jersey, as the "First Lieutenant Salvatore S. Corma II Post Office Building". (June 13, 2016; 130 Stat. 429)

H.R. 4046/P.L. 114–176

To designate the facility of the United States Postal Service located at 220 East Oak Street, Glenwood City, Wisconsin, as the Second Lt. Ellen Ainsworth Memorial Post Office. (June 13, 2016; 130 Stat. 430)

H.R. 4605/P.L. 114–177

To designate the facility of the United States Postal Service located at 615 6th Avenue SE in Cedar Rapids, Iowa as the "Sgt. 1st Class Terryl L. Pasker Post Office Building". (June 13, 2016; 130 Stat. 431)

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